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Vol. I

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1938

No. 21

WM. H. NEBLETT, VERNON BETTIN, WILLIAM
GEORGE DICKINSON AND ALFRED F. MAC-
DONALD, PETITIONERS,

vs.

SAMUEL L. CARPENTER, JR., INSURANCE COM-
MISSIONER OF THE STATE OF CALIFORNIA,
ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE
OF CALIFORNIA

PETITION FOR CERTIORARI FILED APRIL 2, 1938.

CERTIORARI GRANTED MAY 16, 1938.

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No. 404673

In the Superior Court
of the
State of California,

IN AND FOR THE COUNTY OF LOS ANGELES.

**Samuel L. Carpenter, Jr., Insurance
Commissioner of the State of Cali-
fornia,**

Petitioner,

vs.

**The Pacific Mutual Life Insurance
Company of California, a corpora-
tion,**

Respondent.

**Application for Order Appointing
Conservator.**

3

Comes now Samuel L. Carpenter, Jr., as Insurance Commissioner of the State of California, and for cause of action against respondent alleges:

I.

That petitioner is the duly appointed, qualified and acting Insurance Commisisoner of the State of California.

II.

4 That the respondent, The Pacific Mutual Life Insurance Company of California, a corporation, now is and at all times herein mentioned has been a corporation duly organized and existing under and by virtue of the laws of the State of California, and is engaged in the business of life, and health, and accident insurance in the State of California, under a certificate of authority issued by petitioner as Insurance Commissioner of the State of California; that respondent corporation is also engaged in the business of life, and health, and accident insurance in numerous other states of the United States, pursuant to authority granted to it by the various insurance regulatory boards and officers of said states; that respondent corporation has assets in the State of California and in numerous other states of the United States; that the office where respondent corporation's principal business is transacted is in the City of Los Angeles, County of Los Angeles, State of California

III.

That at all times herein mentioned said respondent corporation has been subject to examination by the Insurance Commissioner of the State of California and is required to have a certificate of authority for the transaction of business from said Insurance Commissioner.

7

IV.

That petitioner together with a number of other insurance commissioners of states in which respondent corporation transacts its business have made a convention examination of the business and affairs of respondent corporation as of December 31, 1935, and in connection therewith petitioner and said other commissioners have joined in a report of such examination, a certified copy of which is attached hereto, marked 8 Exhibit "A" and made a part hereof.

That said examination and report shows that respondent corporation is in such condition that its further transaction of business will be hazardous to its policy holders, its creditors and to the public; that said examination and report further shows that respondent corporation is insolvent within the meaning of article 13, chapter 1, part 2, division 1, of the Insurance Code of the State of California; that respondent corporation's said hazardous and insolvent condition is principally caused, among other things, by reason of the fact that respondent corporation has for a considerable number of years last past issued a large number of non-cancellable accident and health policies at a premium rate which was and is now entirely inadequate to maintain the reserves required by law to mature said policy obligations.

10

V.

That it is necessary and proper that your petitioner be authorized and directed to immediately take and retain title and possession of all of respondent's books, records, property, both real and personal, and assets wheresoever situated, for the purpose of conserving same in the interest of all of respondent's policy holders, creditors, stockholders and the public in general; that petitioner be appointed conservator of respondent corporation; that he be authorized and directed as such conservator to conduct the business of respondent corporation; that respondent and all of its officers, agents and employees be ordered to immediately deliver into the possession of petitioner all of the property and assets of respondent; and that all officers, agents and employees of respondent be forthwith enjoined from further transacting business and from disposing of any of the property of respondent.

VI.

That your petitioner is informed and believes and therefore alleges that various actions, suits and proceedings to which respondent is a party, have been filed and are pending in the courts of the State of California, and in various other states in which respondent corporation is transacting business, involving various alleged obligations of respondent, and that irreparable loss and

- 13 injury will be suffered by respondent, by its contract holders, by its creditors, by its stockholders and by the public in general unless the prosecution of said actions, suits and proceedings, and all legal process incident thereto, is enjoined until petitioner is herein appointed as Conservator of the business and affairs of respondent, and given reasonable opportunity to become advised of the issues involved in said actions, suits and proceedings, and with the interest of respondent and of its contract holders and creditors with respect to said issues.

VII.

- That it is necessary and proper that all claimants against said respondent and all other persons be enjoined from instituting or maintaining any action or suit or proceeding upon any property of respondent, wheresoever situated, from taking any other legal steps or proceedings against any such property of respondent, and from doing any act interfering in any way with the assumption and retention of the title and possession of respondent's said property by petitioner, or with the conservation, conduct and administration of the business and affairs of the respondent.

VIII.

That respondent corporation, has assets in excess of two hundred million dollars (\$200,000,000), and has obligations on policies issued and

- 16 outstanding in excess of six hundred million dollars (\$600,000,000) insuring the lives and condition of health of approximately two hundred thousand (200,000) or more persons; that respondent corporation also has accident and health policies outstanding insuring approximately an additional seventy-five thousand (75,000) persons; that by reason of the magnitude of the business of respondent corporation,
- 17 and the enormous number of policy holders and creditors involved, and the *fact* that immediate liquidation of the assets of respondent corporation would have upon the insurance business in general, it is proper, as a matter of public policy, that your petitioner be authorized and directed to ascertain and endeavor to work out a rehabilitation and/or reinsurance plan or agreement concerning respondent corporation in order
- 18 that the policy holders and creditors, stockholders and the public in general may have their rights protected and fairly and equitably adjusted.

Wherefore, petitioner prays that an order be made

- (1) Directing petitioner forthwith to take title and possession of all of respondent's books,

19 records, property, both real and personal, and assets of said respondent corporation where-soever situated;

(2) That title to all of the said property and assets of said respondent, wheresoever situated, be vested in petitioner, or his successor in office in his official capacity, and all persons be enjoined and restrained from interfering with petitioner's possession and title thereto;

20 (3) Appointing petitioner conservator of respondent corporation and directing him as such conservator to conduct the business of respondent corporation;

(4) That said respondent corporation, its officers, directors, agents, servants and employees be restrained and enjoined from transacting any of the business of respondent corporation, or disposing of any of its property or assets until the
21 further order of the court;

(5) That all creditors of respondent corporation, all claimants against said respondent, and all other persons, be enjoined from instituting or maintaining any suit or proceeding at law or in equity against said respondent, and from attaching or executing upon, or taking any other legal step or proceeding against any of the property

22 of respondent corporation, and from doing any act interfering with the possession and administration by petitioner of said property;

(6) Directing petitioner to formulate, work out and prepare a rehabilitation and/or reinsurance plan or agreement concerning respondent corporation which, in the judgment of petitioner, will most fairly and equitably protect and adjust the rights, obligations and liabilities

23 of all persons concerned in the assets, business and affairs of respondent corporation, and that when said rehabilitation and/or reinsurance plan or agreement is formulated and prepared, it be submitted to the above entitled court for its approval; and

(7) For such other and further relief as this court may deem meet and proper.

24 Dated: Los Angeles, California, July 22, 1936.

SAMUEL L. CARPENTER, JR.
Insurance Commissioner of the State of
California.

Petitioner.

U. S. WEBB,

Attorney General,

By: JOHN L. FLYNN,

Deputy Attorney General

Attorneys for Petitioner.

25 State of California, County of Los Angeles—ss.

Samuel L. Carpenter, Jr., being first duly sworn, on oath says:

That he is the Insurance Commissioner of the State of California; that he has read the within Petition and knows the contents thereof; and that the same is true of his own knowledge except as to the matters and things therein stated on his information or belief, and that as to
26 those matters and things he believes it to be true.

SAMUEL L. CARPENTER, JR:

Subscribed and sworn to before me this 22 day of July, 1936.

[Seal]

KATHRYN BUCKMAN,
Notary Public in and for said County and State

28 Memorandum of Points and Authorities.

I.

Where the Insurance Commissioner finds, after examination, that an insurance company is in a hazardous condition, he may apply for his appointment as conservator of said company.

Section 1011 Insurance Code.

II.

29 All persons or companies engaging in insurance business, subject to examination by the Insurance Commissioner, are subject to the provisions of article 14, chapter 1, part 2, division 1 of the Insurance Code.

III.

Upon the appointment of a conservator, the court shall enjoin and restrain all persons from interfering with the Insurance Commissioner in
30 the operation, management and conduct of the business and affairs of said insurance company.

Section 1020 Insurance Code.

Respectfully submitted,

U. S. WEBB, —

Attorney General,

By: JOHN L. FLYNN,

Deputy Attorney General

Attorneys for Petitioner.

81

State of California
Department of Investment
Division of Insurance
San Francisco

Los Angeles, July 22, 1936.

32

I, Samuel L. Carpenter, Jr., Insurance Commissioner, of the State of California, do hereby certify that I have compared the annexed copy of report of examination of The Pacific Mutual Life Insurance Company of California, of Los Angeles, California with the original on file in my office, and that the same is a full, true and correct transcript thereof, and of the whole of said original.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

33

[Seal]

SAMUEL L. CARPENTER, JR.,
Insurance Commissioner.

By H. F. RISBROUGH,

Deputy.

Los Angeles, California
July 21, 1936

Hon. Jess G. Read
Chairman, Committee on Examinations
National Association of Insurance Commissioners
Oklahoma City, Oklahoma

Hon. Samuel L. Carpenter, Jr.
Insurance Commissioner
San Francisco, California

Hon. E. A. Conway
Secretary of State
Baton Rouge, Louisiana

35 Hon. Robert L. Bowen
Superintendent of Insurance
Columbus, Ohio

Hon. R. L. Daniel
Chairman, Board of Insurance Commissioners
Austin, Texas

Hon. George A. Bowles
Superintendent of Insurance
Richmond, Virginia

Hon. William A. Sullivan
Insurance Commissioner
Olympia, Washington

36 Sirs:

Pursuant to your direction, the undersigned examiners have made an examination of the accounts and financial condition of

THE PACIFIC MUTUAL LIFE INSURANCE COMPANY OF
CALIFORNIA

with home office at Los Angeles, California, and are showing herewith the financial statement compiled.

37

FINANCIAL STATEMENT

We herewith present separately for the Life and Accident Departments statements of Income and Disbursements for the year 1935 and a consolidated statement of Assets and Liabilities as of December 31, 1935.

THE PACIFIC MUTUAL LIFE INSURANCE COMPANY OF

CALIFORNIA

FINANCIAL STATEMENT

as of

DECEMBER 31, 1935

LIFE DEPARTMENT

CAPITAL STOCK

38	Amount of Capital paid up December 31 of current year.....	\$508,200.00	
	Amount of ledger assets (as per balance) December 31 of previous year.....	\$172,568,589.32	
	Increase of paid-up capital during the year (transferred from Accident Department).....	224,100.00	
	Extended at		<u>\$172,792,689.32</u>

INCOME

Gross Premiums less Reinsurance

	<u>First Year</u>	<u>Renewal</u>	
39 Life	\$1,713,948.76	\$16,378,312.53	
Disability Benefits	69,006.10	695,100.00	
Annuities	3,394,834.17	2,169,635.15	
Dividends applied to pay renewal premiums	160,569.16	869,011.72	
TOTALS	<u>\$5,338,358.19</u>	<u>\$20,112,059.40</u>	25,450,417.59
Consideration for supplementary contracts involving life contingencies			456,178.91
Consideration for supplementary contracts not involving life contingencies including \$0.00 disability.....			1,057,089.37
Dividends left with the Company to accumulate at interest.....			600,497.79

40	Interest, Dividends and Rents:	
	Gross interest on mortgage loans, less \$11,799.53 accrued interest on mortgages acquired during the year.....	\$3,329,773.48
	Gross interest on collateral loans.....	174,588.36
	Gross interest on bonds, and dividends on stocks \$1,928,214.36, less \$185,176.65 accrued interest on bonds acquired during the year.....	\$246,642.72 1,989,680.43
	Gross interest on premium notes, policy loans and liens	2,137,625.21
	Gross interest on deposits in trust companies and banks	22,751.45
	Gross interest on other debts due the Company:	
	Agents' balances	11,709.71
	Unlisted assets	9,799.28
41	Gross rent from Company's property, including \$298,918.00 for Company's occupancy of its own buildings (being \$262,015.80 for Life and \$36,902.20 for Accident Departments) less \$0.00. interest on incumbrances.....	1,100,254.36
	Total Interest, Dividends and Rents.....	\$ 8,776,182.28
	Income from other sources:	
	Unlisted assets	101,790.44
	Return premiums disclaimed.....	475.07
	Written off checks.....	2,214.32
	Income from property sold in previous years.....	375.00
	Bonus on investments.....	29,992.56
		134,847.39
	From Agents' balances previously charged off.....	344.58
42	Suspense accounts awaiting adjustment.....	95,145.81
	Gross profit on sale or maturity of ledger assets, viz:	
	Real estate	\$ 30,383.39
	Bonds	337,117.72
	Stocks	51,891.20
		419,392.31
	Gross increase, by adjustment in book value of ledger assets, viz:	
	Bonds	13,409.91
	Collateral loans—restored from unlisted assets—now fully secured.....	143,858.36
		157,268.27
	TOTAL INCOME	\$ 3,147,364.30
	AMOUNT CARRIED FORWARD.....	\$209,940,053.62

Amount brought forward \$209,940,053.62

DISBURSEMENTS

	Gross Amount	Deduct Reinsurance	
Death claims.....	\$6,077,430.03	\$ 396,630.00	\$5,680,800.03
Matured endowments	759,880.00	0.00	759,880.00
Permanent and total disability:			
Payments made	1,287,563.88	4,080.00	1,283,483.88
Premiums waived	262,738.99	662.12	262,076.87
TOTALS	\$8,387,612.90	\$ 401,372.12	\$7,986,240.78

For annuities involving life contingencies,
excluding payments on supplementary contracts
(including cash refund payments)..... 1,144,948.06

Surrender values 7,231,184.47

44 Dividends to policyholders:

Applied to pay renewal premiums.....\$ 869,011.72

Applied to purchase paid up additions
and annuities 160,569.16

\$1,029,580.88

Paid in cash or applied in liquida-
tion of loans, or notes..... 141,531.39

Left with the Company to accumulate
at interest 600,497.79 1,771,610.06

Total paid, policyholders..... \$ 18,133,983.97

Paid for claims on supplementary contracts:

Involving life contingencies..... 239,957.86

Not involving life contingencies..... 819,612.21 1,059,570.07

Dividends and interest thereon held on deposit:

45 Surrendered during year:

Dividends\$ 408,919.06

Interest 78,641.13 487,560.19

Applied during year to shorten endowment or premium paying period:

Dividends 37,842.03

Interest 16,260.49 54,102.52 541,662.71

#Expense of investigation and settlement of policy claims,
including \$30,903.93 for legal expenses..... 192,374.10

Commissions to agents (less commissions on reinsurance):

First year's premiums..... 921,635.16

Renewal premiums 1,108,565.08

Annuities (original) 297,984.17

Annuities (renewal) 150,113.99 2,478,298.40

Commuted renewal commissions..... 25,060.75

*Compensation of managers and agents not paid by commission
for services in obtaining new insurance..... 221,612.01

46	Agency supervision and traveling expenses of supervisors (except compensation for home office supervision).....		\$	40,038.80
	Branch office expenses, including salaries of managers and clerks not included in item # above.....			164,626.69
	Medical examiners' fees.....	\$	87,167.09	
	Inspection of risks.....		39,089.13	126,256.22
<hr/>				
	Salaries and all other compensation of officers, directors, trustees and home office employees.....			921,733.97
	Payments to inactive employees.....			7,425.00
	Home office travel.....			15,800.02
	Rent, including \$176,888.00 for Company's occupancy of its own buildings, less \$0.00 received under sublease.....			191,138.00
Miscellaneous Expenses:				
47	Bureau and association dues and expenses.....		\$	6,060.48
	Legal expenses not included in item # on preceding page.....			6,883.66
	Furniture and fixtures.....		28,976.39	
	Printing and stationery.....		55,723.63	
	Books, newspapers and periodicals.....		4,024.01	
	Postage, express, telegraph, telephone and exchange.....		35,209.26	
	Advertising.....		42,048.68	
	Insurance except on real estate.....		5,052.34	
	General office maintenance and expense.....		692.19	
	Contributions.....		21,329.27	
	Legislative expense.....		4,706.07	
	Employees' insurance.....	\$	4,826.86	
	Lunches.....		32,980.21	
48	Health and welfare.....			48,292.38
	Insurance Department examinations.....		401.40	
	General audits.....		16,111.97	16,513.37
<hr/>				
	Contributions to employees' stock syndicate.....		7,998.98	283,510.71
<hr/>				
Taxes, licenses and fees:				
	State taxes on premiums.....	\$	386,728.30	
	Insurance Department.....		10,609.40	
	Other state taxes.....		489.74	
	Federal.....		112,657.71	
	All other (except on real estate).....		11,910.46	522,395.61

49	Real Estate:		
	Repairs and expenses.....	509,092.95	
	Taxes	199,728.17	708,821.12
<hr/>			
	Paid stockholders for dividends (cash).....		127,050.00
	Agents' balances charged off.....		31,021.04
	Outlay on unlisted assets.....	39.25	
	Loss on deposits in suspended banks.....	69.06	108.31
<hr/>			
	Miscellaneous investment expenses (less \$67,098.63 recovered from previous year).....		268,981.23
	Stockholders' surplus transferred to Accident Department.....		200,000.00
	Suspense accounts adjusted.....	\$ 11,386.06	
	Paid on return premiums disclaimed.....	1,449.18	12,835.24
<hr/>			
50	Gross loss on sale or maturity of ledger assets, viz:		
	Real estate	\$ 24,472.21	
	Bonds	32,586.45	
	Stocks	8,766.71	
	Mortgage loans	2,836.57	\$ 68,661.94
<hr/>			
	Gross decrease by adjustment, in book value of ledger assets, viz:		
	Real estate	\$ 27,397.05	
	Bonds (including \$40,388.54 for amortization of premiums)	175,432.94	
	Stocks	148,390.30	
	Collateral loans	7,700.00	358,920.29
<hr/>			
51	TOTAL DISBURSEMENTS	\$ 26,701,886.20	
<hr/>			
	BALANCE	\$183,238,167.42	
<hr/>			

THE PACIFIC MUTUAL LIFE INSURANCE COMPANY OF
CALIFORNIA

FINANCIAL STATEMENT

as of
DECEMBER 31, 1935

ACCIDENT DEPARTMENT

CAPITAL STOCK

Amount of Capital Paid up December 31 of current year	\$508,200.00
Amount of ledger assets (as per balance), December 31 of previous year.....	\$27,552,866.23
Decrease of paid up capital during the year.....	224,100.00
53. Extended at	\$27,328,766.23

INCOME

	Return Premiums on Policies Canceled (Written Basis)	Reinsurance (Written Basis)	Net Premiums	
Accident	\$418,446.46	\$34,182.80	\$1,896,795.97	
Health	93,639.69	4,952.30	611,716.67	
Non-Cancellable Accident and Health	323,388.80	0.00	3,557,740.95	
Totals	\$835,474.95	\$39,135.10	\$6,066,253.59	\$ 6,066,253.59

54. Gross interest on mortgage loans, less \$0.00 accrued
interest on mortgages acquired during the year..... \$ 957,511.91

Gross interest on bonds \$375,571.18 and dividends on
stocks \$17,056.50 less \$19,276.49 accrued interest
on bonds acquired during the year..... 373,351.19

Gross interest on miscellaneous accounts..... 7,137.22

Gross interest on employees' stock purchase plan..... 10,054.89

Gross rents from Company's property, including \$0.00
for Company's occupancy of its own building, less
\$0.00 interest on incumbrances..... 48,936.97

Total Interest and Rents..... \$ 1,396,992.18

55 Income from Other Sources:			
Return premiums disclaimed.....	\$	6,458.72	
Written off checks.....		92.80	
Suspense accounts awaiting adjustment.....		4,320.49	
Income other than rent from properties.....		2,245.25	
Consideration for supplementary contracts.....		51,475.06	
Bonus on investments.....		1,099.40	
Stockholders' surplus transferred from Life Department.....		200,000.00	\$ 265,691.72
<hr/>			
From agents' balances previously charged off.....	\$	40.13	
Gross profit on sale or maturity of ledger assets, viz: Bonds.....		100,032.00	
Gross increase in adjustment in book value of ledger assets, viz:			
Bonds (including \$10,260.28 for accrual of discount).....			10,356.48
<hr/>			
TOTAL INCOME			7,839,366.10
<hr/>			
AMOUNT CARRIED FORWARD			\$35,168,132.33

DISBURSEMENTS

Amount brought forward \$35,168,132.33

	Gross Amount paid for losses	Reinsurance	Net amount paid policyholders for losses	
Accident	\$ 717,528.03	\$27,946.26	\$ 689,581.77	
Health	376,743.18	6,079.49	370,663.69	
Non-cancellable Accident and Health	\$4,528,186.10	0.00	4,528,186.10	
Totals	\$5,622,457.31	\$34,025.75	\$5,588,431.56	\$ 5,588,431.56

57 Investigation and adjustment of claims:			
Accident	\$	51,950.23	
Health		27,924.05	
Non-cancellable accident and health.....		314,702.63	394,576.91
<hr/>			
Commissions or brokerage, less amount received on return premiums and reinsurance:			
Accident	\$514,517.86		
Health	128,768.38		
Non-cancellable accident and health.....	588,979.87	\$1,232,266.11	
<hr/>			
Salaries and all other compensation of officers, directors, trustees and home office employees.....		196,152.43	
Payments to inactive employees.....		2,000.00	
Home office travel.....		4,982.35	
Agency supervision and traveling expenses of supervisors		18,126.02	

58	Salaries, traveling and all other expenses of agents not paid by commissions.....	20,083.24	
	Salaries, traveling and all other expenses of branch office employees and agents not paid by commissions.....	55,811.14	
	Medical examiners' fees and salaries.....	27,519.22	
	Inspections, including accident prevention.....	11,432.69	
	Rents, including \$36,827.00 for company's occupancy of its own buildings, less amounts included in other items.....	16,332.00	
	Taxes, licenses and fees:		
	State taxes on premiums.....	\$104,914.82	
	Insurance department.....	1,974.59	
	Other state taxes.....	169.26	
	Federal.....	55,551.76	
	All other (except on real estate).....	2,615.82	\$ 165,226.25
59	Legal expenses \$2154.08; advertising \$12,617.14; printing and stationery \$6,541.08.....	21,312.30	
	Postage, telegraph, telephone, exchange and express \$3762.95; insurance \$347.12.....	4,110.07	
	Furniture and Fixtures \$5512.44; books, newspapers and periodicals \$369.77.....	5,882.21	
	Bureau and Association dues and assessments.....	2,736.18	
	Miscellaneous underwriting expense:		
	Employees' insurance.....	\$ 779.26	
	Employees' lunches.....	4,389.50	
	Health and welfare.....	1,755.11	
	Insurance Department examinations.....	44.60	
	Contributions.....	3,471.27	
	General audits.....	2,622.87	
	Contributions to employees' stock syndicate.....	1,302.18	14,364.79 \$ 1,798,337.00
	Real estate:		
60	(a) Repairs and expenses.....	38,514.45	
	(b) Taxes.....	41,212.33	79,726.78
	Miscellaneous investment expense:		
	Miscellaneous interest.....	12,730.42	
	Investment expenses (less \$29,088.00 recovered from previous years).....	— 8,278.56	4,451.86
	Paid on supplementary contracts.....	45,296.09	
	Agents' balances charged off.....	1,552.56	
	Gross loss on sale or maturity of ledger assets, viz: Stocks.....	3,538.01	
	Gross decrease, by adjustment, in book value of ledger assets, viz: Bonds (including \$373.49 for amortization of premiums).....	416.76	
	TOTAL DISBURSEMENTS	7,916,327.53	
	BALANCE	\$27,251,804.80	

**THE PACIFIC MUTUAL LIFE INSURANCE COMPANY OF
CALIFORNIA
COMBINED STATEMENT OF ASSETS AND LIABILITIES**

as of
DECEMBER 31, 1935

ASSETS

LEDGER ASSETS

	Life Department	Accident Department	Total
Book value of real estate	\$ 15,411,692.30	\$ 2,612,846.75	\$ 18,024,539.05
Mortgage loans on real estate	71,402,104.61	16,977,208.24	88,379,312.85
Loans secured by pledge of bonds, stocks or other collateral	4,309,672.98	0.00	4,309,672.98
Loans made to policyholders on this Company's policies assigned as collateral	33,207,147.08		33,207,147.08
Premium notes on policies in force	2,785,607.60		2,785,607.60
Book value of bonds	47,270,658.44	4,429,363.86	51,700,022.30
Book value of stocks	4,282,837.31	2,141,559.05	6,424,396.36
Cash in Company's office	5,394.61	3,305.39	8,700.00
Deposits in trust companies and banks, not on interest	2,581,477.65	24,850.29	2,606,327.94
Deposits in trust companies and banks, on interest	1,725,000.00		1,725,000.00
Deposits in suspended banks	35,659.28	3,542.09	39,201.37
Bills receivable	14,374.92	625.03	14,999.95
Agents' balances	206,540.64	29,004.13	235,544.77
Gross premiums, less return premi- ums and reinsurance, in course of collection		727,929.32	727,929.32
Due for reinsurance on paid losses..		680.74	680.74
Employees' stock purchase plan.....		300,889.91	300,889.91

TOTAL LEDGER ASSETS	\$183,238,167.42	\$27,251,804.80	\$210,489,972.22
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NON-LEDGER ASSETS

Interest due \$145,628.50 and ac- crued \$707,871.01 on mortgages....	\$ 678,993.06	\$ 174,506.45	\$ 853,499.51
Interest due \$0.00 and accrued \$25,- 760.68 on collateral loans	25,760.68		25,760.68
Interest due \$899,554.03 and ac- crued \$328,015.80 on premium notes, policy loans or liens.....	1,227,569.83		1,227,569.83
Interest due \$0.00 and accrued \$612,896.77 on bonds not in default	548,069.47	64,827.30	612,896.77
Interest due \$0.00 and accrued \$8,570.83 on deposits in banks.....	8,570.83		8,570.83
Dividends in course of transmission	875.00	4,687.50	5,562.50
Rents due \$10,204.32 and accrued \$1,411.59	10,370.91	-1,245.00	11,615.91
Total interest and rents due and accrued	2,500,209.78	245,266.25	2,745,476.03

64 NON-LEDGER ASSETS

<u>Continued</u>	<u>Life</u> <u>Department</u>	<u>Accident</u> <u>Department</u>	<u>Total</u>
Due from other companies for paid losses or claims on policies of this company, reinsured	\$ 11,447.00	\$	\$ 11,447.00
Premiums due and unreported on policies in force 12-31-35 less re-insurance (net)	3,379,076.89		3,379,076.89
Market value of stocks over book value	221,708.44	88,440.95	310,149.39
GROSS ASSETS	\$189,350,609.53	\$27,585,512.00	\$216,936,121.53

65 DEDUCT: ASSETS NOT
ADMITTED

Agents' debit balances	235,325.34	35,327.55	270,652.89
Bills receivable	14,374.92	625.03	14,999.95
Premium notes, policy loans and other policy assets in excess of net value and of other liabilities on individual policies	5,000.00		5,000.00
Deposits in suspended banks, less \$2,181.10 estimated amount recoverable	33,515.93	3,504.34	37,020.27
Gross premiums in course of collection effective prior to October 1, 1935		2,787.43	2,787.43

66 Employees' stock purchase plan over par value of stock held as security		284,856.91	284,856.91
Book value of bonds over market value \$1,386,004.54 less \$1,231.41 amortization adjustment	1,169,170.74	215,602.39	1,384,773.13
Increase in book value due to inter-departmental profit on transfer of securities		18,828.85	18,828.85
Total assets not admitted	1,457,386.93	561,532.50	2,018,919.43
ADMITTED ASSETS	\$187,893,222.60	\$27,023,979.50	\$214,917,202.10

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LIABILITIES, SURPLUS AND OTHER FUNDS

Net present value of all outstanding policies in force Dec. 31, 1935 as computed on the following tables of mortality:

Actuaries' table at 4% on all policies issued prior to Jan. 1, 1901	\$ 1,508,595.00	\$ 1,508,595.00
American Experience table at 3½% on all non-participating policies issued since Dec. 31, 1900 and on all participating policies issued between Jan. 1, 1901 and Dec. 31, 1907, inclusive, except a few annual dividend policies of 1907, and on all participating insurance issued after Jan. 1, 1918.....	115,069,140.00	115,069,140.00
American Experience table at 3% on a few annual dividend policies issued in 1907 and on all participating policies issued between Jan. 1, 1908 and Dec. 31, 1917 inclusive	11,701,768.00	11,701,768.00
Sesqui-American Experience table at 3½%	955,235.00	955,235.00
Double American Experience table at 3½%	259,070.00	259,070.00

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	<u>Life</u> <u>Department</u>	<u>Accident</u> <u>Department</u>	<u>Total</u>
Net present value of annuities (including those in reduction of premiums):			
Actuaries' table at 4%.....	\$ 14,792.00	\$	\$ 14,792.00
McClintock's table at 3½%.....	5,885,747.00		5,885,747.00
American Experience table at 3½%	15,508,363.00		15,508,363.00
Combined annuitants' table at 3½%	4,066,510.00		4,066,510.00
American Experience table at 3%	231,211.00		231,211.00
Total	155,200,431.00		155,200,431.00

70 Deduct net value of risks reinsured in other solvent companies.....	211,231.00	211,231.00
--	------------	------------

Net reserve (paid-for basis) excluding disability

154,989,200.00

154,989,200.00

Reserve for total and permanent disability benefits included in life and annuity contracts: active lives \$3,225,863.00, less \$0.00 reinsurance; disabled lives \$6,927,457.00, less \$32,664.00 reinsurance

10,120,656.00

10,120,656.00

Present value of amounts not yet due on supplementary contracts not involving life contingencies, excluding disability claims.....

5,718,710.00

5,718,710.00

Policy claims and losses outstanding:

Life Department

	Net reported outstanding policy claims and losses, less rein- surance	Estimated net losses incurred but not yet reported	Total li- ability for outstanding policy claims and losses
Death	\$ 625,623.00	\$ 46,000.00	\$ 671,623.00
Disability Benefits	546,173.00	100,000.00	646,173.00
72 Matured Endow- ments	5,233.00	0.00	5,233.00
Annuities involving life contingencies	20,529.00	0.00	20,529.00
Totals	\$ 1,197,558.00	\$146,000.00	\$ 1,343,558.00

73 Accident Department

	Net unpaid claims exclud- ing incurred	but not re- ported, less reinsurance	Incurred but not reported	Total unpaid accident and health claims
Accident	\$ 245,580.00	\$ 65,000.00	\$ 310,580.00	
Health	344,598.00	35,000.00	379,598.00	
Non-cancellable accident and health	19,443,031.00	200,000.00	19,643,031.00	
Totals	\$20,033,209.00	\$300,000.00	\$20,333,209.00	

74 Total losses and claims, as above: \$ 1,343,558.00 \$20,333,209.00 \$ 21,676,767.00

	<u>Life Department</u>	<u>Accident Department</u>	<u>Total</u>
--	----------------------------	--------------------------------	--------------

Due and unpaid on supplementary contracts <u>not</u> involving life con- gencies	\$ 2,928.44	\$	\$ 2,928.44
Dividends left with Company to accumulate at interest, and ac- crued interest thereon.....	4,251,237.00		4,251,237.00
Gross premiums paid in advance, including surrender values so applied, less discount, if any.....	1,177,534.00		1,177,534.00
75 Estimated expenses of investiga- tion and adjustment of claims....		863,339.00	863,339.00
Unearned premium reserve—Acci- dent Dept.		2,903,928.12	2,903,928.12
*Additional reserve on non-can- cellable accident and health policies		24,685,977.00	24,685,977.00
Unearned interest and rent paid in advance	616,363.87	1,217.10	617,580.97
Commissions due or accrued: life \$19,828.78, accident \$77,957.00, health \$26,443.00, non-cancellable accident and health \$35,626.00....	19,828.78	140,026.00	139,854.78
Salaries, rents, expenses, & bills, etc., due or accrued.....	30,000.00	19,037.81	49,037.81

76	Medical examiners' fees.....	20,229.00		20,229.00
	Inspection of risks.....	1,227.00		1,227.00
	Legal fees	10,050.00		10,050.00
	Estimated amount hereafter payable for federal, state and other taxes	570,560.52	204,223.27	774,783.79
	Dividends or other profits due policyholders, including those contingent on payment of outstanding and deferred premiums	59,800.00		59,800.00
	Dividends declared on or apportioned to ANNUAL DIVIDEND policies payable to policyholders to and including June 30, 1936, whether contingent upon the payment of renewal premiums or otherwise.....	943,600.00		943,600.00
77	Dividends declared on or apportioned to DEFERRED DIVIDEND policies payable to policyholders to and including Dec. 31, 1936	18,625.44		18,625.44
	Amounts set apart, apportioned, provisionally ascertained, calculated, declared or held awaiting apportionment upon DEFERRED DIVIDEND policies, not included above.....	46,644.00		46,644.00
	Reserve for supplementary contracts		\$ 185,562.00	185,562.00
	Reserve for return premiums held in abeyance		14,510.41	14,510.41
78	Reserve for mortgage loans.....	1,022,724.94	130,000.00	1,152,724.94
	Reserve for collateral loans.....	660,625.00		660,625.00
	Reserve for real estate.....	420,000.00	310,000.00	730,000.00
	Renewal bonus fund.....	22,644.00		22,644.00
	Policy liabilities, address of payee unknown	16,134.80		16,134.80
	Funds in. suspense.....	95,145.81	4,320.49	99,466.30
	TOTAL LIABILITIES.....	\$182,178,026.60	\$49,795,350.20	\$231,973,376.80
	Capital paid up.....	254,100.00	254,100.00	508,200.00
	Unassigned funds; Surplus	5,461,096.00	23,025,470.70#	17,564,374.70#
	TOTAL	\$187,893,222.60	\$27,023,979.50	\$214,917,202.10

*See concluding paragraph.

#Deficit.

PACIFIC MUTUAL LIFE INSURANCE COMPANY OF CALIFORNIA
ANALYSIS OF CHANGES IN SURPLUS DUE TO EXAMINERS' ADJUSTMENTS AND DIVISION OF
SURPLUS OR DEFICIT BETWEEN PARTICIPATING AND NON-PARTICIPATING BUSINESS

DECEMBER 31, 1935

LIFE DEPARTMENT	Per Company	Per Examiners	Participating		Non-Participating	
			Decrease	Increase	Decrease	Increase
Interest due and accrued on Mortgages	\$ 748,596.92	\$ 678,993.06	\$ 49,905.97	\$	\$ 19,697.89	\$
Interest due and accrued on premium notes, policy loans and liens	1,235,074.15	1,227,569.83	5,380.60		2,123.72	
Interest due and accrued on bonds	552,776.97	548,069.47	3,389.40		1,318.10	
Market value of stocks over book value	0.00	221,708.44		159,630.08		62,078.36
Book value of bonds over market value, less amortiza- tion adjustments	740,932.15	1,169,170.74	308,331.78		119,906.81	
Deposits in suspended banks, less \$2143.35 estimated amount recoverable	35,170.64	33,515.93		1,191.39		463.32
Reserve for total permanent disability, active lines	3,050,863.00	3,225,863.00	123,375.00			51,625.00

Policy claims and losses outstanding.....	1,534,308.00	1,343,558.00	132,742.93	58,007.07
Unearned interest on mortgage loans paid in advance.....	548.78	854.65	220.23	85.64
Estimated amount hereafter payable for Federal and State taxes.....	461,700.00	570,560.52	76,746.67	32,113.85
Reserve for contingencies.....	2,846,519.00	0.00	2,041,093.60	805,425.40
Special contingency reserve.....	660,625.00	0.00	473,700.50	186,924.50
Reserve for collateral loans.....	0.00	660,625.00	473,700.50	186,924.50
Reserve for mortgage loans.....	0.00	1,022,724.94	736,361.96	286,362.98
Reserve for real estate.....	0.00	420,000.00	302,400.00	117,600.00
Totals.....		\$2,079,812.11	\$2,808,358.50	\$1,112,898.65
Deduct decreases.....			2,079,812.11	817,758.49
Net increase—Life Department.....			728,546.39	295,140.16
Surplus per annual statement—Life Department.....			4,063,572.58	373,836.87
Surplus per Examiners—Life Department, carried forward.....			\$6,792,119.97	\$ 668,977.03

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Brought forward	\$4,792,118.97		\$ 668,977.03	
ACCIDENT	Participating		Non-Participating	
DEPARTMENT	Per Company	Per Examiner	Decrease	Increase
Interest due and accrued on mortgages	\$ 198,613.45	\$ 174,506.45	\$ 24,107.00	\$
Interest due and accrued on bonds not in default	65,215.06	64,827.30	387.76	
Market value of stocks over book value	0.00	88,440.95		88,440.95
Agents' debit balances	33,472.93	35,327.55	1,854.62	
Book value of bonds over market value	0.00	215,602.39	215,602.39	
Employees' stock purchase plan over par value of security	99,986.03	284,856.91	814,870.88	
Deposits in suspended banks, less \$37.75 estimated amount recoverable	3,387.79	3,504.34	116.55	
Asset not admitted: increase in book value due to inter-departmental profit in transfer of securities	0.00	18,828.85	18,828.85	
Losses and claims:				
Accident	281,380.00	310,580.00	29,200.00	
Health	349,068.00	379,598.00	30,530.00	
Non-can. accident and health	15,946,510.00	19,643,031.00	3,696,521.00	
Estimated expenses of investigation and adjustment of claims	437,338.00	863,339.00	426,001.00	

Additional reserve for non- can, accident and health.....	4,550,848.00	24,685,977.00	20,135,129.00
Commissions due and to be- come due.....	138,526.00	140,026.00	1,500.00
Salaries, rents, expenses, etc. due or accrued.....	16,000.00	19,037.81	3,037.81
Estimated amount hereafter payable for Federal and State taxes.....	185,100.00	204,223.27	19,123.27
Unearned interest and rents paid in advance.....	1,079.05	1,217.10	138.05
Reserve for contingencies.....	492,856.00	0.00	492,856.00
Reserve for mortgage loans.....	0.00	130,000.00	130,000.00
Reserve for real estate.....	0.00	310,000.00	310,000.00
Totals.....			<u>\$25,226,948.18</u>
			<u>\$581,296.95</u>
Deduct increases.....			<u>\$581,296.95</u>
Net decrease—Accident Department.....			24,645,651.23
Surplus per annual statement—Accident Department.....			1,620,180.53
Deficit per Examiners—Accident Department.....			<u>23,025,470.70</u>
Surplus per Examiners—Participating Division.....		<u>\$4,792,118.97</u>	
Deficit per Examiners—Non-Participating Division.....			<u>\$22,356,493.67</u>

91 While the difficulties in which this Company finds itself is due principally to inadequate rates on non-cancellable accident and health policies a considerable portion could have been alleviated by the executive officers of the Company following the advice of the Company Actuaries as early as 1926, when they advised that the basis of calculation of non-cancellable
92 accident and health reserves was inadequate.

Also, considerable money was lost through a stock syndicate for employees and the making of loans to companies in which certain of the officers were interested.

These matters should all be investigated.

As you will note from the foregoing balance sheet the liabilities exceed the assets for the
93 combined departments by the sum of \$17,564,374.70.

In considering the departments separately you will note that the participating department shows a surplus of \$4,792,118.97 and the non-participating department, including all accident

and health business a deficit of $\begin{array}{r} 22,356,493.67 \\ \hline 23,025,470.70 \end{array}$

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- 94 From a survey of the above figures it is apparent that immediate action must be taken to protect policyholders.

Respectfully submitted,

R. M. MEYER,
Principal Examiner—State of California;

CARL E. HERFURT,
Actuary—State of California;

- 95 THOMAS F. BIENVENN,
Examiner—State of Louisiana;

E. E. COLTRIN,
Examiner—State of Ohio;

HOMER SANDERFORD,
Examiner—State of Texas;

C. B. COULBOURN,
Actuary—State of Virginia;

- 96 F. E. HUSTON,
Actuary—State of Washington.

Endorsed: Filed Jul. 22, 1936. L. E.
Lampton, county clerk; M. E. Howard, deputy.

97 [TITLE OF COURT AND CAUSE.]

**Appearance and Answer Re Application for
Order Appointing Conservator.**

Comes now the respondent in the above entitled cause and enters its voluntary appearance herein and consents that this cause may be immediately presented, tried and determined.

98 Further respondent herein consents to the relief prayed for by petitioner in his application for an order appointing him conservator of respondent corporation.

THE PACIFIC MUTUAL LIFE INSURANCE
COMPANY OF CALIFORNIA,

By A. N. KEMP, President.

ASA V. CALL,

T. RUSSELL HARRIMAN, JR.,

Attorneys for Respondent.

99

Endorsed: Received copy of within appearance this 22nd day of July, 1936. U. S. Webb, attorney general; by John L. Flynn, deputy.

Filed Jul. 22, 1936. L. E. Lampton, county clerk; by M. E. Howard, deputy.

100 [TITLE OF COURT AND CAUSE.]

Order Appointing Conservator and Restraining Order.

101 It appearing that on the 22nd day of July, 1936, the petitioner in the above entitled proceeding filed herein an application for an order appointing the Insurance Commissioner of the State of California as conservator of respondent corporation and for other relief, and that on said date and pursuant to the appearance and answer of respondent corporation on file herein and its written consent waiving notice of the time and place of hearing on file herein, and evidence, both oral and documentary, having been submitted to the court and the court being fully advised in the premises,

102 The court finds that petitioner herein, together with a number of other insurance commissioners of states in which respondent corporation transacts its business, made a convention examination of the business and affairs of respondent corporation as of December 31, 1935, and in connection therewith petitioner and said other commissioners have joined in a report of such examination, certified copy of which said report is attached to said application as Exhibit A thereof;

103 that said examination and report and evidence shows and the court finds the fact to be that respondent corporation is in such condition that its further transaction of business will be hazardous to its policyholders, its creditors and to the public; that said examination and report and evidence further shows and the court finds the fact to be that respondent corporation is insolvent within the meaning of Article 13, Chapter 1, Part 2, Division 1 of the Insurance Code of the State of California; that respondent corporation's said hazardous and insolvent condition is principally caused, among other things, by reason of the fact that respondent corporation has for a considerable number of years last past issued a large number of non-cancellable accident and health policies at a premium rate which was and is now entirely inadequate to maintain the 105 reserves required by law to mature said policy obligations.

Now, therefore, it is hereby ordered, adjudged and decreed that Samuel L. Carpenter, Jr., Insurance Commissioner of the state of California, be and he is hereby appointed conservator of said respondent corporation, its business, assets and affairs, and that said Commissioner be and he is hereby ordered to take possession forth-

106 with of all the books, records, property, real and personal, and assets, wheresoever situated, of said respondent corporation, and to conduct as conservator the business of said respondent corporation for the benefit of the policyholders, creditors and stockholders of respondent corporation and the public in general.

It is further ordered that all the right, title and interest of said respondent corporation in
107 and to all of its assets and property, whether real or personal, wheresoever situated, be and they are hereby vested in petitioner in fee simple; that all persons be and they are hereby enjoined, and restrained from in any manner interfering with the possession and title of said petitioner in and to said assets and property, whether real or personal and wheresoever situated; that in the conservation, management and
108 operation of the assets and business of respondent corporation, petitioner deal with its property, assets and business in his own name as Insurance Commissioner of the State of California; that in such connection petitioner appoint and employ such agent or agents, counsel, clerks and assistants as by him may be deemed necessary and fix their compensation.

It is further ordered that the above-named respondent corporation, its officers, directors,

109 agents, servants and employees be and they hereby are enjoined and restrained from the transaction of any of the business of said corporation or from the disposition of any of its property or assets until the further order of this court.

It is further ordered that the above named respondent corporation, its officers, directors, agents, servants and employees, all creditors of said respondent corporation, all claimants against
110 said respondent corporation and all other persons be and they hereby are enjoined and restrained from interfering with the conservation, management, operation or disposal of any of the assets of or the business of respondent corporation or from instituting or prosecuting any action, suit or proceeding, or from levying any attachment or execution or other process or selling under or prosecuting any attachment or execution or other process against any property or
111 assets of said respondent corporation, wheresoever situated, without the consent of this court obtained after reasonable notice to petitioner.

It is further ordered that all officers, directors, agents, servants and employees of respondent corporation be and they hereby are ordered and directed to deliver to petitioner all books, records, fixtures, equipment, money, bills receivable and

112 other property and assets of said respondent corporation, wheresoever situated.

And it is further ordered that Samuel L. Carpenter, Jr., as conservator of respondent corporation, be and he is hereby authorized and directed to formulate, work out and prepare a rehabilitation and/or reinsurance plan or agreement concerning respondent corporation which shall be subject to the approval of this court and
113 which shall in his judgment fairly and equitably protect and adjust the rights, obligations and liabilities of all persons concerned herein and which shall provide for the removal of the causes and conditions which have made this proceeding necessary; and he is further authorized and directed to pay from the assets of respondent corporation all expenses necessarily incurred.

Done in open court this 22 day of July, 1936.

114

DOUGLAS L. EDMONDS,

Judge of said Superior Court.

Endorsed: Filed Jul. 22, 1936. L. E. Lamp-ton, county clerk; by M. E. Howard, deputy.

Entered Jul. 24, 1936, Docketed Jul. 24, 1936, book 949, page 34, by I. Bottomley, deputy.

115 [TITLE OF COURT AND CAUSE.]

Application for Order to Liquidate.

Comes now Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, and alleges:

I.

That petitioner is the duly appointed, qualified and acting Insurance Commissioner of the State of California; that on the 22nd day of July, 1936, pursuant to application for order appointing conservator, the above entitled court did, in this proceeding, make and enter its order under and pursuant to Section 1011 of the Insurance Code of the State of California appointing petitioner herein as conservator of said respondent corporation, which said order is hereby referred to and made a part hereof; that thereafter and under and in accordance with the terms of said order your petitioner took possession, title and charge of the business, affairs and assets of respondent corporation, wheresoever situated, and in accordance with the terms of said order petitioner did and is continuing to conserve, manage, operate and conduct the business of respondent corporation.

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II.

That your petitioner, together with the insurance authorities of several of the other states in which respondent corporation transacted business, caused to be made a convention examination of the business and affairs of respondent corporation as of the 31st day of December, 1935; that said report of examination contains a true and correct statement of the assets, liabilities, 119 business condition and affairs of respondent corporation; that a certified copy of said report of examination was attached, as "Exhibit A," to the above mentioned application for appointment of a conservator.

III.

That respondent corporation is insolvent within the meaning of Article 13, Chapter 1, Part 2, Division 1 of the Insurance Code of the State 120 of California; that by reason of the large deficiency in the reserves required with respect to non-cancellable disability income policies, and for other reasons, it appears to your petitioner that he will be unable to restore the business, affairs and property of respondent corporation to such a position that it would be able to carry on its business as heretofore, maintain its necessary reserves, and discharge in full its obligations to

- 121 policyholders and others as they mature, and it further appears to your petitioner that further efforts to proceed under Section 1011 of the Insurance Code of the State of California would be futile and not to the best interests of the policyholders, creditors, stockholders and the public in general and that the interests of such persons would be best served by this court granting a
- 122 liquidation and winding up of the business of respondent corporation and appointing petitioner as liquidator of said respondent corporation.

IV.

- That your petitioner proposes to use his best efforts to conserve the value of the assets of the respondent corporation taken over in liquidation in order that the greatest amount may be obtained and the best protection afforded for the
- 123 policyholders, claimants and others interested, and to that end to maintain, so far as possible, the preservation of the goodwill and going concern value of the business, represented in large part by its name, its efficient agency organization and other intangible assets of like nature, all of which, if allowed to lapse into inactivity as a result of these proceedings, would fast deteriorate in value and usefulness, resulting in irreparable damage to the policyholders, credi-

- 124 tors, stockholders and public in general; that in order to prevent irreparable injury and damage to the agency organization and goodwill value of respondent corporation and to preserve and conserve its assets for the benefit of its policyholders, creditors, stockholders and the public in general, it is imperative that all of the assets of respondent corporation be used by petitioner at the earliest possible date to enable him to work out, formulate and prepare a rehabilitation and/or reinsurance agreement which in the judgment of petitioner will most fairly and equitably preserve the value of the assets and protect the rights, interests, liabilities and claims of all persons concerned herein, including the policyholders, creditors, stockholders and the public in general, and which shall provide for the removal of the causes and conditions which have made this proceeding necessary; that petitioner, as conservator, has heretofore been directed by this court to formulate, work out and prepare a rehabilitation and/or reinsurance agreement, and further directed that when such rehabilitation and/or reinsurance agreement is formulated and prepared that the same be submitted to this court for its approval.
- 125
- 126

V.

That heretofore and in said order appointing petitioner as conservator, this court made its order enjoining and restraining said respondent corporation, its officers, directors, agents, serv-

- 127 ants and employees, from the transaction of any of the business of said corporation or from the disposition of any of its property or assets until the further order of this court; and said persons, all creditors of said respondent corporation and claimants against said respondent corporation, and all other persons, from interfering in the transaction, conservation, management, operation or disposal of any of the assets of or the business of respondent corporation, or from instituting or prosecuting any action, suit or proceeding, or from levying any attachment or execution or other process, or selling under or prosecuting any attachment or execution or other process against any property or assets of said respondent corporation, wheresoever situated, without the consent of this court obtained after reasonable notice to petitioner, and it is necessary and desirable that said order so enjoining and restraining said persons may continue in full force and effect in favor of petitioner as liquidator herein.
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VI.

That there are pending various claims of alleged creditors and obligees of respondent; that it is necessary and proper that all creditors and obligees of respondent and all persons having claims against said respondent be given reasonable opportunity to present and file their claims with petitioner after he has been herein appointed liquidator of the business and affairs of

130 respondent; and that petitioner, after his said appointment, have reasonable opportunity to examine into and pass upon the merits of said claims.

Wherefore, petitioner prays for an order of this court:

1. Appointing Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, as liquidator of all of the assets and business of The Pacific Mutual Life Insurance
131 Company of California;

2. Confirming all of the right, title and interest heretofore owned by respondent corporation in and to its assets and property, real and personal, wheresoever situated, and heretofore vested in petitioner as conservator, in petitioner or his successor in office as liquidator of The Pacific Mutual Life Insurance Company of California;

132 3. Directing petitioner to conduct, manage and operate the business of respondent corporation in his own name as Insurance Commissioner of the State of California and as liquidator of The Pacific Mutual Life Insurance Company of California, and to collect, hold and preserve premiums tendered by any former policyholder of respondent corporation;

4. Directing petitioner, as liquidator, to wind up and liquidate the business of respondent corporation;

133 5. Directing petitioner, as liquidator, forth-
with if possible, to formulate, prepare and sub-
mit, for the approval of the court, a plan and
agreement of rehabilitation and reinsurance
which, in the judgment of petitioner, will best
preserve the value of the estate in liquidation
and provide for the removal of the causes and
conditions which have made this proceeding nec-
essary, and most fairly and equitably protect and
134 provide for the rights, interest, liabilities and
claims of all persons concerned herein, and di-
recting petitioner to pay from or make provision
for the payment from the assets of respondent
corporation of all expenses necessarily incurred
in connection therewith;

6. Continuing in full force and effect for
the benefit of petitioner, as liquidator, all of the
injunctions and restraints aforesaid upon any
and all persons by said order of this court ap-
pointing petitioner as conservator of the busi-
135 ness and assets of respondent corporation;

7. Directing petitioner at an appropriate
time to publish notice to the policyholders, credi-
tors, shareholders and all other persons inter-
ested in the assets of respondent corporation to
file their claims with him as liquidator in his
offices located at the Pacific Mutual Building,
Los Angeles, California, or at 417 Montgomery
street, San Francisco, California, with proper
proofs thereof, within six months after the date
of first publication of such notice; and

136 8. For such other and further relief as this court may deem meet and proper.

. Dated: July 22nd, 1936.

SAMUEL L. CARPENTER, JR.,
*Insurance Commissioner of the State of
California,*

Petitioner.

U. S. WEBB,
Attorney General,

By JOHN L. FLYNN,

137 *Deputy Attorney General,*
Attorneys for Petitioner.

State of California, County of Los Angeles—ss.

Samuel L. Carpenter, Jr., being first duly sworn, on oath says:

138 That he is Insurance Commissioner of the State of California; that he has read the within petition and knows the contents thereof; and that the same is true of his own knowledge except as to the matters and things therein stated on his information or belief, and that as to those matters and things he believes it to be true.

SAMUEL L. CARPENTER, JR.

Subscribed and sworn to before me this 22 day of July, 1936.

[Seal]

KATHRYN BUCKMAN,
Notary Public in and for the County of Los Angeles, State of California.

139 In the Superior Court of the State of California, in and for the County of Los Angeles.

Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, petitioner, vs. The Pacific Mutual Life Insurance Company of California, a corporation, respondent. No.

MEMORANDUM OF POINTS AND AUTHORITIES.

I.

140

If at any time after the issuance of an order under Section 1011 of the Insurance Code it shall appear to the Insurance Commisisoner that further efforts to proceed under said section would be futile, he may apply to the court for an order to liquidate and wind up the business of the insurance corporation. Upon a full hearing of such application, the court may make an order directing the winding up and liquidation of the business of such insurance corporation by the Insurance Commissioner as liquidator.

141

Insurance Code, Section 1016;

Insurance Code, Section 1010.

JOHN L. FLYNN.

Endorsed: Filed Jul. 22, 1936. L. E. Lamp-ton, county clerk; by M. E. Howard, deputy.

142 [TITLE OF COURT AND CAUSE.]

**Appearance and Answer Re Application for
Order Appointing Liquidator.**

Comes now the respondent in the above entitled cause and enters its voluntary appearance herein and consents that this cause may be immediately presented, tried and determined.

143 Further respondent herein consents to the relief prayed for by petitioner in his application for an order appointing him liquidator of respondent corporation.

**THE PACIFIC MUTUAL LIFE INSURANCE
COMPANY OF CALIFORNIA,
By A. N. KEMP; President.**

**ASA V. CALL,
T. RUSSELL HARRIMAN, JR.,
*Attorneys for Respondent.***

144 Endorsed: Received copy of the within appearance and answer re application for order appointing liquidator this 22nd day of July, 1936.
U. S. Webb, attorney general; by.....

Filed Jul. 22, 1936. L. E. Lampton, county clerk; by M. E. Howard, deputy.

145 [TITLE OF COURT AND CAUSE.]

Order of Liquidation.

146 The above matter having come on to be heard on the application of Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California and petitioner herein, for an order to liquidate the business of respondent corporation herein, and it appearing that notice has been
146 duly given thereof to said respondent corporation, and respondent corporation being present in court by its duly authorized attorneys and consenting to the relief prayed for in said application, and oral evidence having been taken, and a full hearing having been had, and good cause appearing therefor,

147 The court finds that petitioner, as conservator herein, will be unable to restore the business, affairs and property of respondent corporation to such a position that it will be able to carry on its business as heretofore; maintain its necessary reserves and discharge in full its obligations to policyholders and others as they mature; that further efforts to proceed under Section 1011 of the Insurance Code of the State of California would be futile and not to the best interests of its policyholders, creditors, stockholders and the

148 public generally, and that the interests of such persons would be best served by this court granting a further order providing for and directing the liquidation and winding up of the business of respondent corporation and the appointment of petitioner as liquidator of said respondent corporation:

Now, therefore, it is hereby ordered, adjudged and decreed:

149 1. That Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, is hereby appointed as liquidator of the assets and business of respondent corporation.

2. That all the right, title and interest heretofore owned by respondent corporation in and to its assets and property, real and personal, wheresoever situated, and heretofore vested in
150 petitioner as conservator, is hereby confirmed in petitioner or his successor in office as liquidator of respondent corporation.

3. That petitioner is hereby directed to conduct, manage and operate the business of respondent corporation in his own name as Insurance Commissioner of the State of California, and as liquidator of The Pacific Mutual Life Insurance Company of California, a corporation, and to collect, hold and preserve premiums ten-

151 dered by any form of policyholder of respondent corporation.

4. That petitioner as liquidator is hereby directed to wind up and liquidate the business of respondent corporation.

152 5. That petitioner as liquidator is directed, forthwith if possible, to formulate, prepare and submit for the approval of this court a plan and agreement of reinsurance and rehabilitation or sale and transfer of assets which in the judgment of petitioner will best preserve the value of the estate in liquidation and provide for the removal of the causes and conditions which have made this proceeding necessary and most fairly and equitably protect and preserve the rights, interests, liabilities and claims of all persons concerned herein; and petitioner is directed to pay from or make provision for the payment
153 from the assets of respondent corporation all expenses necessarily incurred in connection therewith, all as heretofore ordered in the order appointing petitioner conservator of the business of respondent corporation.

6. That those provisions of the order of this court appointing petitioner as conservator which restrain or enjoin any person from doing anything whatsoever be, and they hereby are con-

154 tinued in full force and effect in favor of this petitioner as liquidator.

7. That petitioner shall on or before the 10th day of August, 1936 publish a notice to the policyholders, creditors, shareholders and all other persons interested in the assets of respondent corporation, to file their claims with said petitioner as such liquidator in his offices located in the Pacific Mutual Building, Los Angeles, California, or at 417 Montgomery street, San Francisco, California, with proper proofs thereof, 155 within six months after the date of first publication of such notice. Said notice shall be published in a newspaper of general circulation within Los Angeles County, California, that being the county in which this proceeding is pending, and shall be published not less than once a week for not less than four successive weeks.

Petitioner is further directed to file a copy of said notice, accompanied by affidavit of due publication, including a statement of the date of 156 first publication, with the clerk of this court.

Dated: July 22, 1936.

DOUGLAS L. EDMONDS,
Judge of the Superior Court.

Endorsed: Filed Jul. 22, 1936, 1 p. m.
L. E. Lampton, county clerk; by M. E. Howard,
deputy.

Entered Jul. 23, 1936; docketed Jul. 23, 1936,
book 944, page 160, by I. Bottomley, deputy.

157 [TITLE OF COURT AND CAUSE.]

Petition for Order Permitting, Approving and Authorizing Rehabilitation, Sale and Transfer of Assets and Reinsurance Plan and Agreement of the Pacific Mutual Life Insurance Company of California.

Comes now Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, and alleges:

I.

158

Petitioner is the duly appointed, qualified and acting Commissioner of Insurance of the State of California. That on the 22nd day of July, 1936, pursuant to an application for order appointing a conservator, the above entitled court did in this proceeding make and enter its order under and pursuant to section 1011 of the Insurance Code of the State of California, appointing petitioner herein as conservator of said respondent corporation, which said order is hereby referred to and made a part hereof. That there-

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after, pursuant to application for order to liquidate, the above entitled court did in this proceeding make and enter its order under and pursuant to section 1016 of said code, directing the winding up and liquidation of the business of respondent corporation by petitioner as liquidator, which said order is hereby referred to and made a part hereof. That pursuant to said orders, and each of them, your petitioner has

160 taken possession, title and charge of the business, affairs, property and assets of respondent corporation, wheresoever situated, and is proceeding to administer the same pursuant to the terms of said orders.

II.

By the terms of each of said orders your petitioner was further authorized and directed to formulate, work out and prepare a rehabilitation and/or reinsurance plan or agreement concerning respondent corporation, which, in the
161 judgment of petitioner, would preserve the value of the assets in liquidation and fairly and equitably protect the rights, obligations and liabilities of all persons concerned in the assets, business and affairs of respondent corporation, and to submit the same to this court for its approval. Pursuant to said direction your petitioner has formulated a plan and agreement of rehabilitation, sale and transfer of assets and reinsurance,
162 a copy of which said plan and agreement is hereto attached and made a part hereof as Exhibit A.

III.

In the formulation and preparation of said plan and agreement your petitioner has proceeded upon the theory that the same should:

(1) Preserve the value of the assets of the estate for the benefit of its creditors and policyholders;

163 (2) Protect, as far as possible, all of the existing legal rights of all interested parties in the assets of respondent corporation now in liquidation;

(3) Afford the opportunity to policyholders to maintain, in so far as may be possible, the continuity of their insurance policies;

(4) Enable the established business created by respondent corporation to be protected and maintained as a going concern;

164 (5) Protect the solvency of the corporation in which policies may be reinsured by avoiding the primary cause of the condition of respondent corporation, namely, the writing off of non-cancelable disability and life policies on such a basis that the losses and required reserves cannot be paid or maintained.

IV.

165 Under said plan and agreement, if the same shall be approved by this court and shall become effective, your petitioner proposes to organize a new California corporation for the purpose of conducting a life and disability insurance business having a capital of \$1,000,000, consisting of 10,000 shares of the par value of \$100 each, all of one class. Your petitioner will purchase all of the authorized stock of said new company with assets or funds held by him as liquidator of respondent corporation for \$3,000,000. Your petitioner will also transfer to said new company

166 all other assets formerly held by respondent corporation and now held by him as liquidator, excepting the stock of said new company and any and all rights or claims of whatsoever nature which respondent corporation or the liquidator, in his capacity as liquidator of respondent corporation, may have against any of the present or past officers, directors or employees, as such, of respondent corporation, or against any other person, firm or corporation, by reason of wrongful or illegal acts or omissions of any of the
167 past or present officers, directors or employees of respondent corporation, including rights or claims on any fidelity or surety bond or bonds given to or in favor of respondent corporation to secure the faithful performance by any of its officers, directors or employees of any of their duties as such:

Said plan and agreement provides, in substance, that the new company will assume and
168 reinsure, to the extent and in the manner therein stated, present outstanding policies of insurance and also provides for the assumption and payment by the new company, to the extent and in the manner therein provided, of expenses of administration of this proceeding and of claims of policyholders and others filed and finally allowed in the said proceedings. The plan and agreement makes provision, to the extent and in the manner therein stated, for payments to stockholders of respondent corporation.

- 169 Your petitioner has considered it impracticable to formulate or attempt to carry into effect a plan of involuntary mutualization in the manner referred to in section 1045 of the Insurance Code, but your petitioner considers it desirable that the new company should operate as soon as possible upon a mutual basis and has therefore included in the above mentioned plan and agreement provisions looking toward the eventual voluntary mutualization of the new company. In this connection said plan provides that as soon as legally possible the new company and your petitioner, as the holder of all of its outstanding stock, shall prepare and present to the policyholders of the new company a plan for its voluntary mutualization, and any sums paid by the new company for the acquisition of its outstanding stock pursuant to such mutualization plan, if accepted, and not required for the satisfaction of allowed claims against respondent corporation, shall be repaid by your petitioner, as liquidator, to the new company.
- 171

Said plan is to be effectuated by the execution of an agreement between your petitioner as liquidator and said new company, said agreement to be in substantially the form as contained in said Exhibit A hereto attached.

The matter in this paragraph contained is only a brief summary of the terms of said plan and reference is made to said Exhibit A for the complete detailed terms thereof.

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V.

Your petitioner believes that said plan and agreement of reinsurance and rehabilitation will preserve the value of the assets in liquidation, is fair and equitable to the policyholders, creditors and stockholders of respondent corporation, and that it protects the legal rights of all interested parties as they now exist.

Your petitioner also believes ~~that~~ the provisions for mutualization of the new company will prove attractive to both old and prospective policyholders and will strengthen the financial condition of said new company.

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VI.

Petitioner further believes that it is important that said plan should be presently approved by the court and placed in operation forthwith so that there may be no destruction or interruption of the continuity of insurance or of the good will of the present business.

174

Wherefore, your petitioner prays that this court make its order:

1. Approving said plan and agreement of reinsurance and rehabilitation as set forth in Exhibit A as fair and equitable;
2. Authorizing and directing your petitioner forthwith to organize a new corporation and to subscribe to its capital stock by the use of funds and assets under his control as liquidator of

175 respondent corporation, all in accordance with the terms of said plan and agreement;

3. Authorizing and directing the execution by your petitioner and by said new company upon its organization of an agreement in form substantially as set forth in said plan;

4. Authorizing and directing your petitioner to transfer and set over to said new corporation, upon the execution of said agreement, all of the assets of respondent corporation the title to which
176 is now or may hereafter be vested in him, except the stock of said new company, and also except any and all rights of claims of whatsoever nature which respondent corporation or the liquidator, in his capacity as liquidator of respondent corporation, may have against any of the present or past officers, directors or employees, as such, of respondent corporation, or against any other person, firm or corporation, by reason of wrongful or illegal acts or omissions of any of the
177 past or present officers, directors or employees of respondent corporation, including rights or claims on any fidelity or surety bond or bonds given to or in favor of respondent corporation to secure the faithful performance by any of its officers, directors or employees of any of their duties as such;

5. Authorizing and directing said new corporation, forthwith upon the execution of said agreement and the transfer of said assets, to

178 commence and carry on the business of an insurance company as permitted by its articles of incorporation and by the laws of the State of California, including the taking over or reinsurance of all policies now constituting obligations of respondent corporation, and including the execution of new policies;

6. Authorizing and directing your petitioner and said new company to do any and all things necessary or proper to carry out the terms of
179 said plan of reinsurance and rehabilitation, either in the State of California or elsewhere;

7. Directing the officers, directors, agents and employees of said respondent corporation to cooperate with and assist your petitioner and said new company in the effectuation of said plan by the execution of such documents of transfer or conveyance or otherwise and the doing of such acts in connection therewith as may be requested of them by your petitioner.

180 Dated: July 22nd, 1936.

SAMUEL L. CARPENTER, JR.,
*Insurance Commissioner of the
State of California,*
Petitioner.

U. S. WEBB,
Attorney General,

By JOHN L. FLYNN,
Deputy Attorney General,
Attorney for Petitioner.

181 State of California, county of Los Angeles—ss.

Samuel L. Carpenter, Jr., being first duly sworn, on oath says:

That he is the Insurance Commissioner of the State of California; that he has read the within petition and knows the contents thereof; and that the same is true of his own knowledge except as to the matters and things therein stated on his information or belief, and that as to those matters and things he believes it to be true.

182 SAMUEL L. CARPENTER, JR.

Subscribed and sworn to before me this 22 day of July, 1936.

(Seal)

KATHRYN BUCKMAN,

*Notary Public in and for the County of
Los Angeles, State of California.*

In the Superior Court of the State of California in and for the County of Los Angeles.

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Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, petitioner, vs. The Pacific Mutual Life Insurance Company of California, a corporation, respondent. No.

MEMORANDUM OF POINTS AND AUTHORITIES.

I.

The Insurance Commissioner as conservator or as liquidator may, subject to the approval of the court, reinsure the business of any insurance

184 company in any proceeding under article 14 of chapter 1 of part 2 of the Insurance Code, or enter into rehabilitation agreements. The Insurance Commissioner has authority, in accordance with such terms as the court may prescribe, to sell, transfer or otherwise dispose of any real or personal property of any such insurance company.

Section 1043, Insurance Code;

Section 1037(d), Insurance Code.

185

II.

Rehabilitation and reinsurance agreements of insurance companies have been uniformly approved by the courts.

People ex rel. Van Schaick (National Surety Company), 268 N. Y. S. 88, affirmed 264 N. Y. 473, 191 N. E. 521;

Matter of People ex rel. Van Schaick (Title & Mortgage Guarantee Co. of Buffalo), 264 N. Y. 69, 190 N. E. 153;

186

Lester v. Wright (Ga.), 93 S. E. 408;

Royal Union Life Ins. Co. v. Gross (C. C. A. 8), 76 Fed. (2d) 219; certiorari denied, 55 S. Ct. Rep. 834;

Casteel v. Kentucky Home Life Ins. Co. (Ky.), 79 S. W. (2d) 941.

JOHN L. FLYNN.

187

EXHIBIT A.

Rehabilitation, Sale and Transfer of Assets and
Reinsurance Plan and Agreement Concern-
ing The Pacific Mutual Life Insurance
Company of California

Proposed July 22, 1936

By Samuel L. Carpenter, Jr., as Insurance
Commissioner of the State of California

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REHABILITATION, SALE AND TRANSFER OF AS-
SETS AND REINSURANCE PLAN AND AGREE-
MENT CONCERNING THE PACIFIC MUTUAL
LIFE INSURANCE COMPANY OF CALIFORNIA

PRELIMINARY STATEMENT

1. History of Company and Necessity for Plan.

The Pacific Mutual Life Insurance Company
of California was organized under the laws of
the state of California in 1867. Its principal
189 office is located in Los Angeles, California, and
since its organization it has engaged principally
in the business of life insurance and also in the
business of accident and health insurance, and
it has been carrying on its business in more than
forty of the forty-eight states of the United
States and has reached a position of major im-
portance. It is authorized to write, and for
many years has written life insurance policies
on a participating basis as well as life, accident

190 and health insurance policies on a nonparticipating basis. According to its last balance sheet as of December 31, 1935 it has total admitted assets of \$215,561,220.32. Its premium income for the past three years has averaged \$30,393,211.95 per year. Its policyholders exceed 250,000 in number and it has issued and outstanding (including treasury shares) 508,200 shares of its capital stock held by more than 2800 persons. The total life insurance written by it and in
191 force prior to the court proceedings hereinafter mentioned, was approximately \$636,454,000.

In 1918 it commenced writing a new type of policy, viz., a noncancelable disability income policy, which proved to be attractive to the public. Due to the fact that there was little or no actuarial experience on this type of policy at that time, the premium rate established was too low and the reserves established thereon have proved to be inadequate. At the present time
192 and for the past three years the Company has been paying, on the average, approximately \$4,108,000 per year by way of disability benefits on these policies, resulting in substantial annual losses on this class of business. On the basis of past experience with this type of policy, the probable future disability claims on outstanding policies would be so substantial as to make the continuation of the Company's business on its present basis hazardous to all policyholders.

193 As a result of the recent tri-annual Convention Examination of the affairs of the Company, Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, with the approval of the Insurance Commissioners of other states who participated in the Examination, determined to take the proceedings hereinafter mentioned to preserve the assets of the Company and, so far as possible, its agency organization, good will and going business value for the benefit of
194 its policyholders and all other persons interested therein.

2. Court Proceedings.

On July 22, 1936, the Insurance Commissioner, acting pursuant to the California Insurance Code, filed an application with the Superior Court of the State of California in and for the County of Los Angeles, alleging the Company to be in such condition that its further transaction of business would be hazardous to its policy-
195 holders, creditors and the public, and that it was insolvent, and requesting an order vesting title to all of the assets of the Company in the Commissioner in his official capacity and directing the Commissioner to take possession of all of its books, records and properties and to conduct, as conservator, the business of the Company and enjoining the Company from the transaction of its business or the disposition of its property until a further order of court. On the same day

196 an order of court was made and entered granting the application and appointing the Commissioner conservator.

Thereafter, upon further application of the Commissioner, an order of liquidation was made, appointing him liquidator of the Company. In its order the court directed the Commissioner to formulate a plan and agreement of reinsurance and rehabilitation or sale and transfer of assets, which in the judgment of the Commissioner will
197 best preserve the value of the estate in liquidation and provide for the removal of the causes and conditions which made the proceeding necessary and most fairly and equitably protect and preserve the rights, interests, liabilities and claims of all persons concerned. Thereafter, the Commissioner presented to the court and the court approved the following plan and agreement.

PLAN

198 1. Organization of New Company.

The Commissioner, as liquidator, and as such vested with title to all of the properties and assets of the Company, will organize a new corporation (hereinafter referred to as the "New Company") under the laws of California for the purpose of conducting a life and accident and health insurance business. The New Company will have an authorized capital of \$1,000,000 consisting of 10,000 shares of the par value of \$100 per share, all of one class. Although a

199 stock company, it will be authorized to issue participating policies on a legal reserve basis. The directors of the New Company will be selected and approved by the Commissioner. The Commissioner will subscribe for and purchase with assets or funds held by him as liquidator of the Old Company all of the authorized stock of the New Company for \$3,000,000, which will thus establish the New Company with a paid-in capital of \$1,000,000 and a paid-in surplus of \$2,000,000. The stock of the New Company thus issued to the Commissioner as liquidator of the Old Company will be held by the Commissioner, subject to the ultimate mutualization of the New Company, as hereinafter provided.

2. Transfer of Assets to New Company.

201 All of the properties and assets formerly owned by the Old Company and held by the Commissioner as its liquidator will be transferred and conveyed to the New Company, with the exception of the stock of the New Company and certain claims reserved to the Commissioner as liquidator in the agreement hereinafter set forth.

3. Treatment of Policyholders.

Under the plan and agreement the policyholders of the Old Company will be given the following rights:

(a) All policyholders (other than holders of any form of noncancelable income policies hereinafter referred to as "non-can policies") will be

202 entitled either (1) to accept the assumption and
reinsurance by the New Company of their exist-
ing policies or (2) to file a claim with the Com-
missioner as liquidator of the Old Company;

(b) The holders of non-can policies will be
entitled either (1) to file a claim with the Com-
missioner as liquidator of the Old Company, or
(2) to accept the assumption and reinsurance by
the New Company of their existing policies on
the reduced basis provided in the agreement here-

203 inafter set forth.

4. Assumption by New Company of Ex- penses, Allowed Claims and Policy Claims.

The New Company will assume and agree to
pay the following:

—(a) All expenses of the administration of the
Commissioner as conservator and liquidator of
the Old Company, including such attorneys' fees
as may be fixed by the Attorney General of the
State of California and approved by the court
204 in the conservation and liquidation proceeding;

(b) Unpaid taxes, wages, salaries and current
operating bills of the Old Company;

(c) All claims filed with the Commissioner as
liquidator of the Old Company and finally al-
lowed by the Commissioner and/or by the court;

(d) All policy claims of whatever character
(except claims on non-can policies), whether filed,
or whether notice of which was filed, prior or
subsequent to the order of liquidation; subject,

205 however, to any and all defenses thereto which would have been available to the Old Company;

on

(e) Only such claims ~~or~~ non-can policies, as were filed, or notice of which was filed with the Old Company prior to the order of liquidation; subject, however, to any and all defenses thereto which would have been available to the Old Company;

206 Provided, however, that the obligation of the New Company with respect to items (a), (b) and (c) shall be limited to the value of the properties and assets of the Old Company transferred to the New Company pursuant to the agreement hereinafter set forth less the reserves established by the New Company with respect to policies and policy claims of the Old Company assumed and/or reinsured by the New Company.

5. Agents' Contracts.

207 The New Company will assume all outstanding agents' contracts executed by the Old Company; provided, however, (a) no commissions due after the order of liquidation shall be paid on non-can policies on all forms issued prior to, and including, Forms A 291 to A 294, both inclusive, and commissions due after said order on all non-can policies issued on all other forms, the holders of which accept their reinsurance and assumption by the New Company on the reduced basis hereinafter provided in the agreement, shall be reduced

208 in proportion to the reduction in disability benefits to the insured under such policies; and (b) the New Company shall not assume or be bound by any arrangement which the Old Company may have made with its agents regarding payment of commissions on policies after lapsation.

6. Treatment of Stockholders of Old Company.

209 The stockholders of the Old Company shall be entitled to receive pro rata for a period of ten years commencing with the effective date of the agreement hereinafter set forth, the net earnings of the New Company derived from that portion of the business of its nonparticipating life, accident and health departments represented by policies of the Old Company assumed and reinsured by the New Company, remaining after the holders of non-can policies, who shall have elected to accept the assumption and reinsurance of their policies by the New Company on the reduced basis hereinafter provided in the agreement, shall have been restored to the benefits originally provided in their policies and certain depreciation reserves and additions to surplus shall have been established and made as hereinafter provided in the agreement, and after all finally allowed claims filed with the Commissioner as liquidator shall have been paid.

At the end of said ten-year period, the New Company is to create a fund amounting to ten

- 211 dollars per one thousand dollars of nonparticipating life insurance assumed and reinsured by the New Company, to which fund the stockholders of the Old Company shall be entitled pro rata, after restoration to non-can policyholders, establishment of reserves and surplus, and payment in full of allowed claims filed with the Commissioner as liquidator, as aforesaid. The New Company may at its option postpone the creation of said fund, but in such event the New Company shall
- 212 pay an amount equal to interest on said fund at the rate of six per cent per annum until the principal of said fund shall be created, and such interest payments shall be distributed to the stockholders of the Old Company after the fulfillment of the conditions above referred to.

7. Mutualization of New Company.

- As soon as legally possible, the New Company and the Commissioner, as the holder of all of the outstanding stock of the New Company, shall
- 213 prepare and present to the policyholders of the New Company a plan for its voluntary mutualization in accordance with the laws of the State of California, as then in effect. Such mutualization plan shall contain such terms and provisions not inconsistent with this plan and agreement, as may be required by law or approved by the Commissioner and the New Company. The purchase price paid by the New Company for the acquisition of its outstanding stock pursuant to

214 such mutualization plan to the extent not re-
(c)
quired for the satisfaction of items ~~(a)~~ and ~~(b)~~
of paragraph 4 above shall be repaid to the New
Company.

AGREEMENT

215 The plan shall be consummated through the
execution of the following agreement between
the Insurance Commissioner of the State of Cali-
fornia, as liquidator of the Old Company, as one
party, and the New Company as the other party,
and as to any inconsistency between the plan and
the following agreement, the latter shall control:

REHABILITATION, SALE AND TRANSFER OF ASSETS AND REINSURANCE AGREEMENT.

This Agreement, made and entered into this
..... day of, 1936, between
Pacific Mutual Life Insurance Company, a Cali-
fornia corporation, and Samuel L. Carpenter,
216 Jr., as Insurance Commissioner of the State of
California and as liquidator of The Pacific
Mutual Life Insurance Company of California,
a California corporation,

Witnesseth:

Whereas, an order was entered in the Superior
Court of the State of California in and for the
County of Los Angeles on the 22nd day of July,
1936, in a proceeding entitled "Samuel L. Car-
penter, Jr., Insurance Commissioner of the State

217 of California, Petitioner, vs. The Pacific Mutual Life Insurance Company of California, a corporation, Respondent," by which the court found that The Pacific Mutual Life Insurance Company of California was in such condition that its further transaction of business would be hazardous to its policyholders, creditors and to the public, and that said Company was insolvent within the meaning of Article 13, Chapter 1, Part 2, Division 1, of the Insurance Code of the State of
218 California, and by which said order title to all of the assets of said Company, wheresoever situated, was vested in Samuel L. Carpenter, Jr. in his official capacity as Insurance Commissioner of the State of California, and by which order said Commissioner was directed forthwith to take possession of all of the books, records, property, real and personal, and assets of said Company and to conduct as conservator the business of said Company, and enjoining said Company and
219 its officers, directors, agents, servants and employees from the transaction of its business or disposition of its property until the further order of said court, and pursuant to said order said Commissioner has become vested with the title to and did take possession of all of the books, records, property, real and personal, and assets of said Company; and

Whereas, said Commissioner as conservator as aforesaid, did thereafter apply to said court for

220 an order for the liquidation of said Company and for an order directing the Commissioner to formulate and submit a plan and agreement of rehabilitation and reinsurance which, in the judgment of the Commissioner, would best preserve the value of the estate in liquidation, provide for the removal of the cause which made the proceeding necessary, and most fairly and equitably protect the rights and claims of all persons interested therein; and

221 Whereas, said court thereafter made and entered an order for the liquidation of said Company, appointing the Commissioner as liquidator thereof, and as such vested with title to all of the assets of said Company, and directing the Commissioner to file such a plan; and

Whereas, said Commissioner submitted to said court a Rehabilitation, Sale and Transfer of Assets and Reinsurance Plan and Agreement, of which this agreement is a part, alleging that said
222 plan and agreement will preserve the value of the assets in liquidation, is fair and equitable to the policyholders, creditors and stockholders of said Company, and protects the legal rights of all interested parties as they now exist; and

Whereas, thereafter said court made and entered an order approving said plan and agreement, and finding that said plan and agreement is fair and equitable and protects the existing legal rights of the policyholders, creditors and

223 stockholders of said Company, and directing that the Commissioner proceed to consummate said plan and execute this agreement;

Now, Therefore, in consideration of the premises and of the respective undertakings of the parties hereto, It Is Hereby Agreed:

Definitions

1. The parties to this agreement and the persons mentioned herein will be referred to and certain terms used herein are hereby defined as follows:

224

Samuel L. Carpenter, Jr., in his capacity as Insurance Commissioner of the State of California and as liquidator of The Pacific Mutual Life Insurance Company of California, and any successor Commissioner and liquidator, will be referred to as "Commissioner."

The Pacific Mutual Life Insurance Company of California will be referred to as the "Old

225

Company."

Pacific Mutual Life Insurance Company will be referred to as the "New Company."

The Superior Court of the State of California in and for the County of Los Angeles will be referred to as the "Court."

The date and hour of entry of said order of liquidation, to wit, July 22, 1936, at o'clock M. Pacific Standard Time, will be referred to as the "date of liquidation."

226 This agreement shall be deemed to have been executed and shall be effective as of the date and hour of entry of said order of liquidation, and said date and hour will be referred to as the "effective date of this agreement."

The phrase "assets of the Old Company" or any similar phrase used in this agreement shall be deemed to mean all books, records, property, real and personal, tangible and intangible, and all other assets of every kind, character and description whatsoever, and wheresoever situated, owned by the Old Company at the time of the appointment of the Commissioner as conservator which shall not have been applied by him against his subscription for stock of the New Company or disposed of by him in the due course of his administration as conservator or in his administration as liquidator of the Old Company, plus all property acquired by the Commissioner in either of said capacities and the income therefrom collected by him, except (a) the stock of the New Company held by him, and (b) any and all rights or claims of whatsoever nature which the Old Company or the Commissioner, in his capacity as liquidator of the Old Company, may have against any of the present or past officers, directors or employees, as such, of the Old Company, or against any other person, firm or corporation, by reason of wrongful or illegal acts or omissions of any of the past or present officers,

229 directors or employees of the Old Company, including rights or claims on any fidelity or surety bond or bonds given to or in favor of the Old Company to secure the faithful performance by any of its officers, directors or employees of any of their duties as such.

Outstanding policies of the Old Company known as its Non-Cancelable Income Policies, including the Aggregate form thereof, will be referred to as "Non-Can Policies."

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Transfer of Assets

2. The Commissioner shall grant, bargain, sell, assign, convey, transfer, set over and deliver to the New Company the assets of the Old Company.

231 The Commissioner shall not be required to make manual delivery of any cash or securities deposited by the Old Company with any governmental authority as a condition to the conduct of its business, but shall only be required to assign his interest therein, subject to the terms of such deposit.

The Commissioner shall transfer and deliver to the New Company the full amount of all premiums paid to the Commissioner on any policy reinsured and assumed hereunder which have been paid in to the Commissioner on or after the date of liquidation, and the New Company shall credit the holder of such policy with the payment of

- 232 such premiums accordingly, subject to repayment as hereinafter provided in the event the holder of such policy shall elect not to accept such reinsurance and assumption by the New Company. The New Company shall repay to the Commissioner upon demand any premium received by the New Company hereunder from the Commissioner which was paid by or on behalf of the insured after the date of liquidation to the Commissioner, if the policyholder has filed or shall file a claim
- 233 in accordance with the Commissioner's notice requiring the filing of claims in the above mentioned cause, and the court shall direct the Commissioner to return the premium so paid.

- Subsequent to the effective date of this agreement and for such period of time as the Commissioner may determine, no investment or reinvestment of the assets of the Old Company transferred to the New Company pursuant to this agreement shall be made without first obtaining
- 234 the written approval of the Commissioner. The Commissioner hereby agrees that said period shall in no event exceed six months from and after the effective date of this agreement.

Reinsurance and Assumption of Policies Other Than Non-Can Policies

3. The New Company does hereby reinsure and assume, as of the date of liquidation, with the exception hereinafter provided, the liability of the Old Company under all life, endowment an-

235 nuity and term policies and contracts of insurance, and all other policies and contracts of insurance, including, without limiting the same to, health and accident benefits, waiver of premium disability benefits, permanent and total disability benefits, and all supplementary contracts, annuity contracts and all reinsurance contracts, issued or assumed by the Old Company and outstanding and in force on the books and records of the Old Company at the date of liquidation, subject, however, to any and all defenses, offsets, counter-claims, cross-complaints and rescission rights against said policies or contracts or against any claims and actions thereon, which would have been available to the Old Company had this agreement not been made; provided, however, that all outstanding Non-Can Policies are not reinsured or assumed under this paragraph and are hereby expressly excepted from the obligations of the New Company under this paragraph. The determination by the New Company as to the validity of any policy claim on policies reinsured and assumed under this paragraph and the payment thereof shall be binding upon all persons so reinsured hereunder.

Reinstatement of Lapsed Policies

4. The New Company will reinstate any policies heretofore issued, assumed or reinsured by the Old Company, which are not excepted from the obligations of the New Company contained

238 in the foregoing paragraph and which at the date of liquidation, by their terms, were entitled to reinstatement, provided that all requirements necessary to procure a reinstatement of said policies under their terms are fulfilled to the satisfaction of the New Company.

The New Company will also reinstate, during the lifetime of the insured and provided the insured is not in such condition as to be eligible for benefits under the policy, without evidence of insurability, any of said policies, with the afore-
239 said exception, which have lapsed since the date of liquidation, upon written application therefor by the insured and the payment of all premiums in arrears, if such application is made and premiums are paid within sixty (60) days after the effective date of this agreement. Upon the reinstatement of such lapsed policy it shall, for all purposes, be treated the same as if it had been
240 in force on the date of liquidation and be subject to the terms and conditions of this agreement.

Payment of Policy Claims Other Than Claims on Non-Can Policies

5. The New Company will pay in full, in accordance with the terms and conditions of the policies or other contracts under which the claims shall have been or may be made, and whether or not the claims arose or matured prior or subsequent to the date of liquidation, all claims (except claims on Non-Can Policies) including, without

- 241 limiting the same to, claims for death benefits, matured endowments, annuity payments, permanent total disability and premium waiver benefits, accident and sickness benefits, payments under policy settlement agreements, policy dividends left at interest with the Old Company prior to the date of liquidation, and payments under all other matured contracts under which the proceeds of policies and contracts were left with the Old Company prior to the date of liquidation; subject,
- 242 however, to any and all defenses, offsets, counterclaims, cross-complaints and rescission rights against any such claim or claims which would have been available to the Old Company had this agreement not been made.

Reinsurance and Assumption of Non-Can Policies

6. The New Company does hereby reinsure and assume, as of the date of liquidation, the liability of the Old Company under all Non-Can Policies issued by the Old Company and outstanding and in force on the books and records of the Old Company at the date of liquidation, subject,
- 243 however, to the terms, conditions and limitations, and only to the extent hereinafter specifically provided and subject, further, to any and all defenses, offsets, counterclaims, cross-complaints, and rescission rights against such policies or any claims and actions thereon which would have been available to the Old Company had this agreement not been made. The determination by the New

244 Company as to the validity of any policy claim on policies reinsured and assumed under this paragraph and the payment thereof shall be binding upon all persons so reinsured hereunder.

Terms, Conditions, Limitations and Extent of
Reinsurance and Assumption of Non-Can
Policies

245 7. The obligation of the New Company with respect to the payment of monthly disability benefits on claims either filed or notice of which is filed with the New Company or any of its predecessors at any time after the date of liquidation under Non-Can Policies reinsured and assumed under the preceding paragraph, subject to restoration as provided in paragraph 8 hereof, shall be limited to payment of the following percentages of the monthly disability benefits originally provided under said policies, according to the following premium classes, respectively:

246	Premium Class of Policy	Percentage of Original Monthly Benefit Assumed By New Company
	1918 Premium class	
	Issued under Rate Books:	
	A 1445, A 1445 Z, A 1445 Y, A 1445 X, and A 1445 W.	20%
	in period from:	
	August, 1918—September, 1921	
	1921 Premium class	
	Issued under Rate Books:	
	A 1687, A 1687 Z, A 1687 Y, A 1687 X, A 1687 W.	35%

- 247 in period from:
 September, 1921—July, 1926.
- 1926 Premium class
Issued under Rate Books:
 A 1958, A 1958 Z, A 1958 Y, 45%
in period from:
 July, 1926—February, 1929.
- 1929 Premium class
Issued under Rate Books:
 A 2293 55%
- 248 in period from:
 February, 1929—January, 1931.
- 1931 Premium class
Issued under Rate Book:
 A 2367 65%
- in period from:
 January, 1931—March, 1932.
- 1932 Premium class
Issued under Rate Books:
 A 2432, A 2432 Z, A 2499 90%
- in period from:
- 249 March, 1932—February, 1935.
- Aggregate policy
Issued under Rate Books:
 A 2499, A 2567 90%
- in period from:
 October, 1933—July, 1935.

Note: All of the above mentioned Rate Books are Rate Books issued by the Old Company and copies are on file at the office of the New Company at 523 West Sixth Street, Los Angeles,

- 250 California, and in the offices of the Insurance Commissioners or similar public officials of each state in which the Old Company has been transacting insurance business.

Notwithstanding the foregoing limitation on the obligation of the New Company to make monthly disability payments on such policies, there shall be no change or reduction in the original premium rates on such policies, and to be entitled to the reinsurance and assumption of his
251 Non-Can Policy by the New Company as afore-said, the policyholder shall be obligated to continue to make premium payments at the rate originally provided in his policy.

Restoration of Non-Can Benefits

8. The New Company shall be obligated to restore the monthly disability benefits originally provided in the Non-Can Policies reinsured and assumed under this agreement by applying and
252 only by applying, to such extent and in such manner and at such time or times as may be proposed by the New Company and approved by the Insurance Commissioner of the State of California as hereinafter provided, sums equivalent to the following:

(a) The net profits derived by the New Company from that portion of the business of its accident and health department represented by accident and health policies reinsured and as-

253 sumed under this agreement, including all Non-
Can Policies so reinsured and assumed here-
under; and

(b) The net profits derived by the New
Company from that portion of the business of
the nonparticipating branch of its life depart-
ment represented by nonparticipating life insur-
ance policies reinsured and assumed hereunder.

254 As of December 31, 1938, and tri-annually
thereafter or at the time of the regular exam-
ination of the New Company by the Insurance
Commissioner of the State of California, the
New Company shall render to such Commissioner
an accounting of the net profits, if any, arising
from the sources referred to in (a) and (b)
above, including the New Company's proposal as
to the extent and manner of the application of
sums equivalent to such net profits to the restora-
tion of benefits on said Non-Can Policies. Any
255 such proposal may include provision for propor-
tionate restoration of commissions to agents, who
through accepting the assumption of their con-
tracts on the basis hereinafter provided, have re-
ceived less commissions on such policies than they
otherwise would have received. After the ap-
proval of any such proposal by said Commis-
sioner with such changes as he may require
therein, the New Company shall proceed to put
said proposal into effect. The extent and manner
of the restoration, as provided in any such pro-

256 posal so approved by said Commissioner, shall be binding upon all holders of said Non-Can Policies and other persons interested therein.

The holders of any such Non-Can Policies surrendered to the New Company in connection with any settlement thereunder, shall not be entitled thereafter to any of the benefits of such restoration.

257 The holders of any such Non-Can Policies which shall have lapsed after the date of liquidation and which shall not have been reinstated either in accordance with their terms or in accordance with the provisions of this agreement, shall not be entitled thereafter to any of the benefits of such restoration.

Reinstatement of Lapsed Non-Can Policies

258 9. The provisions of paragraph 4 of this agreement with respect to reinstatement of lapsed policies shall apply to Non-Can Policies, subject to the terms, conditions and limitations contained in paragraphs 6 and 7 hereof.

Payment of Claims on Non-Can Policies Filed

Prior to Date of Liquidation

10. The New Company shall be obligated to continue the payment of all disability benefits under Non-Can Policies, claims or notices of claims for which had been filed with the Old Company prior to the date of liquidation, and all payments under settlement agreements made

259 by the Old Company with claimants under such policies, without any deduction or limitation whatsoever, but subject to all of the terms and provisions of such Non-Can Policies, and subject to any such settlement agreements; and subject, further, to any and all defenses, offsets, counter-claims, cross-complaints, and rescission rights against any such claim or claims, which would have been available to the Old Company had this agreement not been made.

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Moratorium

11. The reinsurance and assumption of obligations by the New Company herein provided for are subject to the condition that the new Company shall not be required, prior to sixty (60) days, and such additional period as may be determined by the Commissioner, from and after the effective date of this agreement, to make policy loans (except for the purpose of paying premiums on the same policy or on additional policies issued on the same life), or to pay cash surrender values. This provision, however, shall not apply to any increase in values that are accumulated from premium payments or loan repayments which are received subsequent to the date of liquidation.

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During such period as the moratorium is in effect the cash surrender option of all policies of the Old Company may be considered as non-existing, except as provided above, and all pol-

- 262 icyholders who do not pay their premiums and who are entitled to a guaranteed value will be restricted to the automatic nonforfeiture value (properly adjusted for any policy indebtedness and accrued interest thereon) under the policy. At the discretion of the New Company, however, the cash surrender value under any policy, properly adjusted for any policy indebtedness and accrued interest thereon, may be allowed whenever it appears, in the sole judgment of the New Company, that the granting of such surrender value will be to the advantage and benefit of the Old Company policyholders as a class.
- 263

Assumption of Claims Against Old Company

12. The New Company hereby assumes and agrees to pay the following:

(a) All costs and expenses of the Commissioner in his capacities as conservator or liquidator of the Old Company, including attorneys' fees, as finally approved by the court;

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(b) All unpaid taxes legally due the United States, the State of California, and other States, and Counties and Municipalities thereof, in connection with the business and assets of the Old Company, and remaining unpaid.

(c) Wages and salaries legally due to persons employed by the Old Company for services rendered and current bills for office supplies and incidental expenses in connection with the

265 operation of the business of the Old Company and remaining unpaid.

(d) All claims against the Old Company filed with the Commissioner as liquidator, and finally allowed by the Commissioner and/or by the court.

The obligation of the New Company with respect to items (a), (b), (c) and (d) above shall be to pay the same, in the order of preference established by law, and shall be limited, in the
266 aggregate, to an amount equal to the value of the assets of the Old Company transferred to the New Company pursuant to this agreement, on the basis of valuation provided in paragraph 13 of this agreement, less the amount of the reserves established by the New Company, with the approval or in accordance with the requirements of the Commissioner, with respect to policies of the Old Company reinsured and assumed by the New Company hereunder, and with
267 respect to policy claims assumed by the New Company hereunder.

Valuation of Assets Transferred to New Company

13. The assets of the Old Company transferred to the New Company pursuant to this agreement shall be valued at the amounts established therefor in the so-called "Convention Report" made in 1936 by the Commissioner and similar officials of certain other states in which

268 the Old Company did business, with respect to the condition of the Old Company, as of December 31, 1935.

Agents

14. The New Company hereby assumes, subject to the limitation and exception hereinafter stated, any obligations under any contract heretofore made by the Old Company with any agent (regardless of classification), manager, or supervisor, it being recognized that the services of the agents who produced, or under his direction or supervision was produced, the business reinsured or assumed hereunder in servicing said business, and the maintaining of same in force as to the ultimate interest and advantage of the policyholders of the Old Company. However, the obligations of the Old Company to pay commissions on Non-Can Policies reinsured and assumed by the New Company, with the limitations as to disability benefits hereinbefore provided, shall be reduced as follows: (a) No commissions due after the date of liquidation shall be paid on Non-Can Policies on all forms issued prior to and including Forms A291 to A294, both inclusive, and commissions due after the date of liquidation on all Non-Can Policies issued on all other forms, and the holders of which accept and reinsure their assumption by the New Company on the reduced basis hereinbefore provided, shall be reduced in proportion to the re-

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- 271 duction in disability benefits to the insured under such policies. The New Company shall not assume or be bound by any agreement which the Old Company may have made with agents with respect to payment of commissions on policies after lapsation. To such extent, in such manner and at such time or times as may be proposed by the New Company and approved by the Insurance Commissioner of the State of California, as provided in paragraph 8 of this agreement,
- 272 the New Company shall apply its net profits derived from the sources referred to in (a) and (b) of said paragraph 8 to the restoration to agents of the amounts of the reduction in their commissions on policies referred to in (b) of this paragraph to which said agents would have otherwise been entitled.

Additional Payments on Allowed Claims and
Payments to Stockholders of Old Company

- 273 15. For a period of ten (10) years commencing January 1, 1937, the New Company shall pay to the Commissioner for the benefit of holders of claims filed with the Commissioner and finally allowed by him or by the court, until such claims shall have been paid in full, and thereafter for the benefit of and distribution to the stockholders of the Old Company, the net profits of the New Company derived from the sources referred to in (a) and (b) of paragraph 8 of this agreement remaining after:

274 (a) The holders of Non-Can Policies referred to in said paragraph 8 shall have been restored to the full benefits originally stated in their policies as provided in said paragraph; and

(b) The New Company shall have established such reserves as may be deemed necessary by the New Company and the Commissioner for proper depreciation of the assets allocated to, or held by, the New Company for the benefit of the departments referred to in (a) and (b) of said paragraph 8; and

(c) Restoring to surplus allocated to the participating life department of the New Company the sum of \$1,792,118.97, or its equivalent, together with interest thereon to date of restoration at the average rate earned by the New Company during such period on its invested assets; and

276 (d) Creating a reserve or adding to the surplus of the New Company an amount equal to the amount of policy reserve for Non-Can Policies released by reason of lapsation of such policies reinsured and assumed hereunder in excess of a lapse rate of ten per cent (10%) per year, or occasioned by substitutions or exchanges of such policies for other types of accident or health insurance.

At the end of said ten (10) year period, to wit, on January 1, 1947, the New Company shall create a fund equal to \$10 per \$1000 of nonpartici-

277. pating life insurance reinsured and assumed by the New Company under this agreement and then remaining in force, which fund shall be applied, first, to the extent necessary to complete the restoration of holders of Non-Can Policies reinsured and assumed by the New Company hereunder to the benefits originally provided in their policies in such manner and to such extent as may be approved by the Commissioner and subject to the other limitations prescribed in
278. paragraph 8 of this agreement, and, second, to the Commissioner for the benefit of claims filed with the Commissioner and finally allowed, and thereafter for the benefit of and distribution to the stockholders of the Old Company.

In lieu of creating said fund on January 1, 1947, as aforesaid, the New Company may at its option, apply to the aforesaid purposes a sum equal to interest at the rate of six per cent (6%) per annum on an amount equal to said

279. fund computed as aforesaid, until such time as the New Company may elect to create the principal of said fund and apply the same as aforesaid. If the New Company shall elect on January 1, 1947 to pay and apply a sum equal to interest on said fund as aforesaid, then such payment shall be applied in the same manner as, and shall be deemed to be in lieu of the application of the Old Company's net profits as provided in paragraph 8 of this agreement and the Old Company's obligations with respect to appli-

280 cation of said net profits as provided under said paragraph 8 shall terminate.

Any such payments to stockholders of the Old Company, in accordance with the foregoing, shall either be made pro rata to such stockholders, as their interests may appear according to the stock ledgers of the Old Company, or the New Company may issue to the Commissioner or to such stockholders appropriate certificates of the New Company evidencing its obligation 281 to make such payments. Such certificates of interest may either be issued by the New Company to the Commissioner for distribution by him to stockholders of the Old Company in exchange for their stock certificates, or, at the election of the New Company, may be issued by the New Company directly to such stockholders upon the surrender of their stock certificates.

Mutualization of New Company

282 16. The New Company hereby consents to such plan for its voluntary mutualization in accordance with the laws of the State of California as now in effect, or hereafter amended, as may be proposed by the Commissioner, as soon as legally possible; and the Commissioner agrees to propose such mutualization plan, as the holder of the stock of the New Company. Such mutualization plan shall contain such terms and provisions, not inconsistent with this agreement, as may be required by law or approved by the

283 Commissioner and the New Company. The purchase price paid by the New Company for the acquisition of its outstanding stock pursuant to such mutualization plan to the extent not required by the Commissioner as the holder of said stock for the satisfaction of claims against the Old Company, filed with the Commissioner and finally allowed, shall be repaid by the Commissioner to the New Company.

Notice

284 17. The New Company shall mail promptly to the insured named in all policies and supplementary contracts of the Old Company in force at the date of liquidation, and any assignees thereof of record, a printed copy of the Rehabilitation, Sale and Transfer of Assets and Reinsurance Plan concerning the Old Company, including a copy of this agreement as executed, to which the New Company may attach its certificate of reinsurance and assumption, inserted
285 in an envelope, first class postage prepaid, addressed to the name and address of each of the persons aforesaid last shown upon the records of the Old Company. By "assignees of record" is meant assignees appearing upon the records of the Old Company at its Home Office.

Election of Policyholders and Claimants and Effect Thereof

18. Each policyholder and policy claimant of the Old Company may elect either to accept the

- 286 reinsurance and assumption of his policy or contract and/or any claim thereunder by the New Company, as provided in this agreement, or to file his claim against the Old Company with the Commissioner, in the manner provided by the Insurance Code of the State of California with respect to the filing of claims against an insurer in the process of liquidation. Persons so filing claims, who shall not withdraw them as hereinafter provided, are herein referred to as dissenting policyholders. The filing of a claim by
- 287 any dissenting policyholder shall remove the policy or contract in respect of which said claim shall be filed, and the claim of persons under such policy or contract from the benefit of the provisions of this agreement with respect to reinsurance and/or assumption, and shall constitute an irrevocable election, on the part of such policy or contract holder, and his beneficiary and all persons claiming under him, not to accept the
- 288 benefit of such reinsurance and/or assumption provisions unless such claim shall be withdrawn by the claimant at any time prior to the expiration of sixty (60) days from and after the date of the expiration of the time for filing claims, as provided by law, with the written consent of the New Company, in which event such policy or contract, and the persons interested in the benefits thereunder, shall be entitled to the benefit of such reinsurance and/or assumption provisions and shall be bound by this agreement.

289 Every person entitled to accept any benefit under this agreement, who shall have indicated his election so to do either by not filing any such claim, or by withdrawing such claim if filed, shall be considered as assigning to the New Company all his claims against the Old Company, and the benefits of any rights, securities, liens, or preferences to which he may be entitled by reason of his claims and also as so assigning all interest to which his claims may entitle him in all of the
290 assets of the Old Company, whether located in California or elsewhere. The New Company shall be entitled to assert and prosecute its claims, securities, liens or preferences of all holders of policies or contracts, issued or assumed by the Old Company, who so assent to or become bound by the provisions of this agreement, and the New Company shall be entitled to assert and obtain in such manner as it may deem best, any rights, securities, liens, or preferences to which the hold-
291 ers of policies or contracts issued or assumed by the Old Company, who shall so assent to or become bound by the provisions of this agreement, would have had.

Each holder of any policy or contract issued or assumed by the Old Company, who shall not have filed his claim against the Old Company with the Commissioner in the manner and within the period required by law, shall be deemed ipso facto to have assented to and become bound by

292 the provisions of this agreement, and entitled to the benefits hereof, subject to all of its terms. No holder of any such policy or contract of the Old Company who shall be deemed to have assented to or become bound by the provisions of this agreement shall have any rights, securities, liens, or preferences not accorded by this agreement.

Right of the New Company to Prosecute and
Defend Claims

293 19. All claims or demands against the Old Company or its property now the subject of litigation in any court of competent jurisdiction in actions against the Old Company, and any and all claims and demands against the Old Company or its property filed with the Commissioner as liquidator, may be prosecuted and defended until final judgment, and the New Company shall have the right to assist and join in such defense through counsel selected and paid by the New
294 Company, and with all defenses, offsets, counter-claims, cross-complaints and rescission rights that might or could have been available to it, the Old Company, or to the Commissioner as liquidator, including all rights of appeal or review in whatsoever form.

Right of New Company to Settle or Pay Claims
Against Old Company

20. In order that claims against the Old Company may be disposed of as speedily and

295 economically as possible, the New Company shall have the right, with the approval of the Commissioner, to settle, compromise or compound any claim or demand against the Old Company or its property, whether or not such claim or demand shall have been filed with the Commissioner and to pay in discharge thereof such amount as may be mutually agreed upon, and if such claim or demand shall not have been so filed, with like
296 force and effect as if such claim or demand had been duly filed with the Commissioner and finally allowed as above set forth; provided, that no such settlement, compromise or compounding shall affect the right of the New Company to contest and litigate any other claims or demands of similar character.

Withholding of Assets

21. In the event of the institution of primary receivership or other proceedings in any of the states other than the State of California, wherein
297 the Old Company has assets and in which proceedings the assets located in any such state are liquidated and distributed exclusively to policyholders, creditors, stockholders or other persons resident of said state, such policyholders, creditors, stockholders and other persons interested in assets of the Old Company, who accept in any such proceeding their pro rata share of the distribution of the assets of the Old Company located in said state, shall not be entitled to the benefits provided in this agreement.

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298 Interpretation of Agreement and Accountings
Thereunder

22. In the event of any dispute between the New Company and any person entitled to or who has elected to accept the benefits of this agreement, the determination by the Commissioner as to the interpretation of this agreement shall be conclusive and binding upon both parties to any such dispute. The accounting methods or procedure of the New Company in computing any
299 net profits, earnings or other amounts under this agreement and the amount and character of any and all reserves which may be established by the New Company under this agreement or in the course of its operations following the execution of this agreement, shall be subject to the approval of the Commissioner, and all such accounting matters and computations and amounts and characters of reserves when so approved by the Commissioner shall be conclusive and binding
300 upon the New Company and all persons entitled to any benefit under this agreement, including, but not limited to, persons who may have elected to file their claims with the Commissioner as liquidator.

Commissioner Not Personally Liable

23. The Commissioner is bound by the provisions of this agreement only in his capacity as such Commissioner and as conservator or liquidator of the Old Company. All undertak-

301 ings and obligations herein set forth as undertakings or obligations of the Commissioner are made by the Commissioner only in his said capacities and to such extent as he had authority to make the same, and the Commissioner makes no warranty of his authority to make the same. No personal liability on the part of the Commissioner is assumed under this agreement.

Liabilities of New Company Limited by This Agreement

302 24. It is understood that the New Company does not assume any liability to any stockholders of the Old Company in any way arising out of or by virtue of their stock holdings in the Old Company, nor any liability of any character or description to creditors of the Old Company, whether policyholder creditors or others, except as and to the extent provided in this agreement; it being specifically understood that the New
303 Company does not assume any liability of any character or description whatsoever of the Old Company except as and to the extent in this agreement expressly provided, and the provisions of this agreement shall be a complete and adequate defense by the New Company to any action, other than an action to enforce the express provisions of this agreement, which may be brought by such stockholders or creditors above mentioned.

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Amendments

25. This agreement may be amended at any time while the Commissioner remains liquidator of the Old Company, by the consent of the Commissioner and the New Company, subject to the approval of the court.

Assignability of Agreement

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26. This agreement and all rights, duties and obligations hereunder, shall inure to the benefit of and be binding upon the respective parties hereto, their several successors and assigns.

In Witness Whereof, the New Company has caused this agreement to be executed by its president or vice president, attested by its secretary, and its corporate seal to be hereunto affixed, and the Commissioner has executed this agreement, the day and year first above written.

PACIFIC MUTUAL LIFE INSURANCE COMPANY,

By.....

Its President

306

Attest:

Its Secretary

"New Company"

.....
As Insurance Commissioner of the State of California and liquidator of The Pacific Mutual Life Insurance Company of California.

"Commissioner"

Endorsed: Filed Jul. 22, 1936. L. E. Lampton, county clerk; by M. E. Howard, deputy.

307 [TITLE OF COURT AND CAUSE.]

Order Permitting, Approving and Authorizing Rehabilitation, Sale and Transfer of Assets and Reinsurance Plan and Agreement of the Pacific Mutual Life Insurance Company of California.

308 Upon reading and filing the verified petition of Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, for order permitting, approving and authorizing rehabilitation, sale and transfer of assets and reinsurance plan and agreement of The Pacific Mutual Life Insurance Company of California, and it appearing that notice of the filing of said petition has been given to respondent herein, and respondent having appeared in open court by its attorneys and consented to the making of this order, and the court having read and considered the
309 proposed rehabilitation, sale and transfer of assets and reinsurance plan and agreement attached as Exhibit A to said petition, and oral evidence having been taken and the court being fully advised in the premises, and good cause appearing therefor,

The court finds:

1. That it is necessary and desirable that a plan and agreement of rehabilitation and rein-

310 surance of the affairs of respondent corporation, be made and adopted for the protection of the policyholders, creditors and stockholders of said corporation and the conservation of its assets, including the goodwill of its business as a going concern.

2. That the plan and agreement of rehabilitation, sale and transfer of assets, and reinsurance proposed by petitioner herein, a copy of
311 which is attached as Exhibit A to said petition, is fair and equitable and protects the existing legal rights of said policyholders, creditors and stockholders of said respondent corporation.

3. That the organization of a new corporation by petitioner, the execution of an agreement between said new corporation and petitioner, the transfer of certain of the assets held by petitioner as liquidator and formerly owned by said
312 respondent corporation to said new corporation, and the performance of the agreements and covenants of said new corporation set forth in said agreement, all in accordance with the terms of said plan and agreement of rehabilitation, sale of assets and reinsurance, are to the best interests of all policyholders, creditors and stockholders of respondent corporation.

313 4. That said plan and agreement should be made and placed in operation forthwith.

It is therefore ordered, adjudged and decreed:

1. That said plan and agreement of rehabilitation, sale and transfer of assets and reinsurance, as set forth in Exhibit A of said petition, is hereby approved and declared to be fair and equitable to all interested parties.

314 2. That petitioner be and he is hereby authorized and ordered forthwith to organize a new corporation and to subscribe to its capital stock by the use of funds and assets under his control as liquidator of respondent corporation, all in accordance with the terms of said plan.

315 3. That petitioner and said new company upon its organization be and they hereby are authorized and ordered forthwith to execute an agreement in form substantially as set forth in said plan.

4. That petitioner be and he hereby is authorized, permitted and ordered forthwith to transfer and set over to said new corporation, upon the execution of said agreement, all of the assets of respondent corporation the title to which is now or may hereafter be vested in him, except the stock of said new corporation, and also

316 except any and all rights or claims of whatsoever nature which respondent corporation or the liquidator, in his capacity as liquidator of respondent corporation, may have against any of the present or past officers, directors or employees, as such, of respondent corporation, or against any other person, firm or corporation, by reason of wrongful or illegal acts or omissions of any of the past or present officers, directors or employees of respondent corporation, including 317 rights or claims on any fidelity or surety bond or bonds given to or in favor of respondent corporation to secure the faithful performance by any of its officers, directors or employees of any of their duties as such.

5. That said new corporation be and it hereby is authorized and ordered forthwith, upon the execution of said agreement and the transfer 318 of said assets, to commence and carry on the business of an insurance company as permitted by its articles of incorporation and by the laws of the state of California, including the assumption or reinsurance to the extent provided in said agreement of policies of insurance made or written by respondent corporation, and including the execution of new policies.

6. That petitioner and said new company be and they hereby are authorized and ordered to

319 do any and all things necessary, desirable or proper to carry out the terms of said plan and agreement of rehabilitation, sale and transfer of assets and reinsurance, either in the state of California or elsewhere.

7. That the officers, directors, agents and employees of said respondent corporation be and they hereby are directed to cooperate with and assist petitioner and said new company in the 320 effectuation of said plan by the execution of such documents of transfer or conveyance or otherwise and the doing of such acts in connection therewith as may be requested of them by petitioner.

Dated: July 22, 1936.

DOUGLAS L. EDMONDS,

Judge.

321 Endorsed: Filed Jul. 22, 1936. L. E. Lampton, county clerk; by M. E. Howard, deputy.

Entered Jul. 24, 1936; docketed Jul. 24, 1936, book 949, page 36, by I. Bottomley, deputy.

322 [TITLE OF COURT AND CAUSE.]

Petition for Approval of Amendment of Rehabilitation, Sale and Transfer of Assets and Reinsurance Agreement.

Comes now Samuel L. Carpenter, Jr., as Insurance Commissioner of the State of California, and as liquidator of The Pacific Mutual Life Insurance Company of California, and alleges:

- 323** (1) That petitioner is the duly appointed, qualified and acting Commissioner of Insurance of the State of California, and as such the petitioner in these proceedings. That pursuant to order entered herein on July 22, 1936, petitioner, as Insurance Commissioner of the State of California and as liquidator of The Pacific Mutual Life Insurance Company of California, made and entered into with Pacific Mutual Life Insurance Company that certain Rehabilitation, Sale and Transfer of Assets and Reinsurance
- 324** Agreement hereinafter referred to. That pursuant to paragraph 25 of said agreement above mentioned, the said agreement may be amended by the consent of the petitioner and Pacific Mutual Life Insurance Company, subject to the approval of this court. That it now appears to be desirable and to the best interest of petitioner as commissioner and liquidator as aforesaid, and to the best interests of Pacific Mutual Life Insurance Company, that said agreement be amended in particulars hereinafter set forth.

325 (2) That the amendment proposed to be made in said agreement is to amend paragraph 15 thereof so that the same will read as set out in paragraph 15 of the proposed amended agreement which is hereto attached and marked Exhibit A and made a part hereof. The petitioner is advised that Pacific Mutual Life Insurance Company has consented to said proposed amendment.

326 Wherefore, your petitioner prays that this court make its order approving the amendment to said agreement above referred to and authorizing and directing your petitioner in order to make said amendment effective, to execute and deliver an Amended Rehabilitation, Sale and Transfer of Assets and Reinsurance Agreement substantially in the form set out in Exhibit A hereto attached.

Dated: July 23, 1936.

327 SAMUEL L. CARPENTER, JR.,
Insurance Commissioner of the State of California, as Liquidator,

Petitioner.

U. S. WEBB,
Attorney General,
By JOHN L. FLYNN,
Deputy Attorney General,
Attorney for Petitioner.

Verified.

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EXHIBIT "A"

REHABILITATION, SALE AND TRANSFER OF
ASSETS AND REINSURANCE AGREEMENT

Between

PACIFIC MUTUAL LIFE INSURANCE COMPANY

And

SAMUEL L. CARPENTER, JR.

As Insurance Commissioner of the State of
California and as Liquidator of

329

THE PACIFIC MUTUAL LIFE INSURANCE
COMPANY OF CALIFORNIA

Dated July 22, 1936.

As Amended July 23, 1936

Rehabilitation, Sale and Transfer of Assets and
Reinsurance Agreement.

This Agreement, made and entered into this
330 23rd day of July, 1936, between Pacific Mutual
Life Insurance Company, a California corpora-
tion, and Samuel L. Carpenter, Jr., as Insurance
Commissioner of the State of California and as
liquidator of The Pacific Mutual Life Insurance
Company of California, a California corporation,

Witnesseth:

Whereas, an order was entered in the Superior
Court of the State of California in and for the
County of Los Angeles on the 22nd day of July,
1936, in a proceeding entitled "Samuel L. Car-

331 penter, Jr. Insurance Commissioner of the State
of California, Petitioner, vs. The Pacific Mutual
Life Insurance Company of California, a corpo-
ration, Respondent," by which the court found
that The Pacific Mutual Life Insurance Com-
pany of California was in such condition that
its further transaction of business would be
hazardous to its policyholders, creditors and to
the public, and that said Company was insolvent
within the meaning of Article 13, Chapter 1,
332 Part 2, Division 1, of the Insurance Code of the
State of California, and by which said order title
to all of the assets of said Company, wheresoever
situated, was vested in Samuel L. Carpenter, Jr.
in his official capacity as Insurance Commis-
sioner of the State of California, and by which
order said Commissioner was directed forthwith
to take possession of all of the books, records,
property, real and personal, and assets of said
Company and to conduct as conservator the busi-
333 ness of said Company, and enjoining said Com-
pany and its officers, directors, agents, servants
and employees from the transaction of its busi-
ness or disposition of its property until the fur-
ther order of said court, and pursuant to said
order said Commissioner has become vested with
the title to and did take possession of all of the
books, records, property, real and personal, and
assets of said Company; and

Whereas, said Commissioner as conservator
as aforesaid, did thereafter apply to said court

334 for an order for the liquidation of said Company and for an order directing the Commissioner to formulate and submit a plan and agreement of rehabilitation and reinsurance which, in the judgment of the Commissioner, would best preserve the value of the estate in liquidation, provide for the removal of the causes which made the proceeding necessary, and most fairly and equitably protect the rights and claims of all persons interested therein; and

335 Whereas, said court thereafter made and entered an order for the liquidation of said Company, appointing the Commissioner as liquidator thereof, and as such vested with title to all of the assets of said Company, and directing the Commissioner to file such a plan; and

Whereas, said Commissioner submitted to said court a Rehabilitation, Sale and Transfer of Assets and Reinsurance Plan and Agreement, alleging that said plan and agreement will preserve the value of the assets in liquidation, is fair and equitable to the policyholders, creditors and stockholders of said Company, and protects the legal rights of all interested parties as they now exist; and

336

Whereas, thereafter said court made and entered an order approving said plan and agreement, and finding that said plan and agreement is fair and equitable and protects the existing legal rights of the policyholders, creditors and

337 stockholders of said Company, and directing that the Commissioner proceed to consummate said plan and execute this agreement;

Whereas, pursuant to said order last mentioned, Pacific Mutual Life Insurance Company and Samuel L. Carpenter, Jr., as Insurance Commissioner of the State of California and as liquidator of The Pacific Mutual Life Insurance Company of California, made and entered into on July 22, 1936, a Rehabilitation Sale and
338 Transfer of Assets and Reinsurance Agreement (hereinafter referred to as the original agreement), and

Whereas said original agreement provided in Paragraph 25 thereof that the same might be amended at any time while the Commissioner remains liquidator of The Pacific Mutual Life Insurance Company of California, by the consent of said Commissioner and of Pacific Mutual Life Insurance Company, subject to the approval of
339 the court, and

Whereas said Commissioner remains liquidator of The Pacific Mutual Life Insurance Company of California and said Commissioner did on July 23, 1936, propose that Paragraph 15 of the original agreement be amended in certain respects and filed his petition with the court for the approval of such proposed amendment and for the approval of the execution of this agreement to provide for said amendment, and

340. Whereas Pacific Mutual Life Insurance Company has consented to said proposed amendment and the court has made its order under date of July 23, 1936, approving said amendment and the execution of this agreement;

Now, Therefore, in consideration of the premises and of the respective undertakings of the parties hereto, it is hereby agreed that the above mentioned original agreement executed under date of July 22, 1936, shall be, and the same
341 hereby is, amended so that Paragraphs 1 to 26, both inclusive, of said original agreement shall read in words and figures as hereinafter set out in Paragraphs 1 to 26, both inclusive, of this agreement, to-wit:

Now, Therefore, in consideration of the premises and of the respective undertakings of the parties hereto, It Is Hereby Agreed:

Definitions

342 1. The parties to this agreement and the persons mentioned herein will be referred to and certain terms used herein are hereby defined as follows:

Samuel L. Carpenter, Jr., in his capacity as Insurance Commissioner of the State of California and as liquidator of The Pacific Mutual Life Insurance Company of California, and any successor Commissioner and liquidator, will be referred to as "Commissioner."

343 The Pacific Mutual Life Insurance Company of California will be referred to as the "Old Company."

Pacific Mutual Life Insurance Company will be referred to as the "New Company."

The Superior Court of the State of California in and for the County of Los Angeles will be referred to as the "Court."

The date and hour of entry of said order of liquidation, to wit, July 22, 1936, at one o'clock
344 P. M. Pacific Standard Time, will be referred to as the "date of liquidation."

This agreement shall be deemed to have been executed and shall be effective as of the date and hour of entry of said order of liquidation, and said date and hour will be referred to as the "effective date of this agreement."

The phrase "assets of the Old Company" or any similar phrase used in this agreement shall
345 be deemed to mean all books, records, property, real and personal, tangible and intangible, and all other assets of every kind, character and description whatsoever, and wheresoever situated, owned by the Old Company at the time of the appointment of the Commissioner as conservator which shall not have been applied by him against his subscription for stock of the New Company or disposed of by him in the due course of his administration as conservator or in his administration as liquidator of the Old Company, plus

346 all property acquired by the Commissioner in either of said capacities and the income therefrom collected by him, except (a) the stock of the New Company held by him, and (b) any and all rights or claims of whatsoever nature which the Old Company or the Commissioner, in his capacity as liquidator of the Old Company, may have against any of the present or past officers, directors or employees, as such, of the Old Company, or against any other person, firm
347 or corporation, by reason of wrongful or illegal acts or omissions of any of the past or present officers, directors or employees of the Old Company, including rights or claims on any fidelity or surety bond or bonds given to or in favor of the Old Company to secure the faithful performance by any of its officers, directors or employees of any of their duties as such.

Outstanding policies of the Old Company known as its Non-Cancelable Income Policies,
348 including the Aggregate form thereof, will be referred to as "Non-Can Policies."

Transfer of Assets

2. The Commissioner shall grant, bargain, sell, assign, convey, transfer, set over and deliver to the New Company the assets of the Old Company.

The Commissioner shall not be required to make manual delivery of any cash or securities deposited by the Old Company with any govern-

349 mental authority as a condition to the conduct of its business, but shall only be required to assign his interest therein, subject to the terms of such deposit.

The Commissioner shall transfer and deliver to the New Company the full amount of all premiums paid to the Commissioner on any policy reinsured and assumed hereunder which have been paid in to the Commissioner on or after the date of liquidation, and the New Company shall credit the holder of such policy with the payment of such premiums accordingly, subject to repayment as hereinafter provided in the event the holder of such policy shall elect not to accept such reinsurance and assumption by the New Company. The New Company shall repay to the Commissioner upon demand any premium received by the New Company hereunder from the Commissioner which was paid by or on behalf of the insured after the date of liquidation to the Commissioner; if the policyholder has filed or shall file a claim in accordance with the Commissioner's notice requiring the filing of claims in the above mentioned cause, and the court shall direct the Commissioner to return the premium so paid.

Subsequent to the effective date of this agreement and for such period of time as the Commissioner may determine, no investment or reinvestment of the assets of the Old Company transferred to the New Company pursuant to

352 this agreement shall be made without first obtaining the written approval of the Commissioner. The Commissioner hereby agrees that said period shall in no event exceed six months from and after the effective date of this agreement.

Reinsurance and Assumption of Policies Other Than Non-Can Policies

353 3. The New Company does hereby reinsure and assume, as of the date of liquidation, with the exception hereinafter provided, the liability of the Old Company under all life, endowment, annuity and term policies and contracts of insurance, and all other policies and contracts of insurance, including, without limiting the same to, health and accident benefits, waiver of premium disability benefits, permanent and total disability benefits, and all supplementary contracts, annuity contracts and all reinsurance contracts, issued or assumed by the Old Company and outstanding and in force on the books and records of the
354 Old Company at the date of liquidation, subject, however, to any and all defenses, offsets, counterclaims, cross-complaints and rescission rights against said policies or contracts or against any claims and actions thereon, which would have been available to the Old Company had this agreement not been made; provided, however, that all outstanding Non-Can Policies are not reinsured or assumed under this paragraph and

355 are hereby expressly excepted from the obligations of the New Company under this paragraph. The determination by the New Company as to the validity of any policy claim on policies reinsured and assumed under this paragraph and the payment thereof shall be binding upon all persons so reinsured hereunder.

Reinstatement of Lapsed Policies

356 4. The New Company will reinstate any policies heretofore issued, assumed or reinsured by the Old Company, which are not excepted from the obligations of the New Company contained in the foregoing paragraph and which at the date of liquidation, by their terms, were entitled to reinstatement, provided that all requirements necessary to procure a reinstatement of said policies under their terms are fulfilled to the satisfaction of the New Company.

357 The New Company will also reinstate, during the lifetime of the insured and provided the insured is not in such condition as to be eligible for benefits under the policy, without evidence of insurability, any of said policies, with the aforesaid exception, which have lapsed since the date of liquidation, upon written application therefor by the insured and the payment of all premiums in arrears, if such application is made and premiums are paid within sixty (60) days after the effective date of this agreement. Upon the reinstatement of such lapsed policy it shall,

358 for all purposes, be treated the same as if it had been in force on the date of liquidation and be subject to the terms and conditions of this agreement.

Payment of Policy Claims Other Than Claims
on Non-Can Policies

359 5. The New Company will pay in full, in accordance with the terms and conditions of the policies or other contracts under which the claims shall have been or may be made, and whether or not the claims arose or matured prior or subsequent to the date of liquidation, all claims (except claims on Non-Can Policies) including, without limiting the same to, claims for death benefits, matured endowments, annuity payments, permanent total disability and premium waiver benefits; accident and sickness benefits, payments under policy settlement agreements, policy dividends left at interest with the Old Company prior to the date of liquidation, and payments under all other
360 matured contracts under which the proceeds of policies and contracts were left with the Old Company prior to the date of liquidation; subject, however, to any and all defenses, offsets, counter-claims, cross-complaints and rescission rights against any such claim or claims which would have been available to the Old Company had this agreement not been made.

361 Reinsurance and Assumption of Non-Can
Policies

6. The New Company does hereby reinsure and assume, as of the date of liquidation, the liability of the Old Company under all Non-Can Policies issued by the Old Company and outstanding and in force on the books and records of the Old Company at the date of liquidation, subject, however, to the terms, conditions and limitations, and only to the extent hereinafter
362 specifically provided and subject, further, to any and all defenses, offsets, counterclaims, cross-complaints, and rescission rights against such policies or any claims and actions thereon which would have been available to the Old Company had this agreement not been made. The determination by the New Company as to the validity of any policy claim on policies reinsured and assumed under this paragraph and the payment thereof shall be binding upon all persons so reinsured
363 hereunder.

Terms, Conditions, Limitations and Extent of
Reinsurance and Assumption of Non-Can
Policies

7. The obligation of the New Company with respect to the payment of monthly disability benefits on claims either filed or notice of which is filed with the New Company or any of its predecessors at any time after the date of liquidation under Non-Can Policies reinsured and

364 assumed under the preceding paragraph, subject to restoration as provided in paragraph 8 hereof, shall be limited to payment of the following percentages of the monthly disability benefits originally provided under said policies, according to the following premium classes, respectively:

	Percentage of Original Monthly Benefit Assumed By New Company
365 Premium Class of Policy	
1918 Premium class	
Issued under Rate Books:	
A 1445, A 1445 Z, A 1445 Y, A 1445 X and A 1445 W.	20%
in period from:	
August, 1918—September, 1921	
1921 Premium class	
Issued under Rate Books:	
366 A 1687, A 1687 Z, A 1687 Y, A 1687 X, A 1687 W.	35%
in period from:	
September, 1921—July, 1926.	
1926 Premium class	
Issued under Rate Books:	
A 1958, A 1958 Z, A 1958 Y,	45%
in period from:	
July 1926—February, 1929.	

367 1929 Premium class

Issued under Rate Books:

A 2293

55%

in period from:

February, 1929—January, 1931.

1931 Premium class

Issued under Rate Book:

A 2367

65%

in period from:

January, 1931—March, 1932.

368 1932 Premium class

Issued under Rate Books:

A 2432, A 2432 Z, A 2499

90%

in period from:

March, 1932—February, 1935.

Aggregate policy

Issued under Rate Books:

A 2499, A 2567

90%

in period from:

369 October, 1933—July, 1935.

Note: All of the above mentioned Rate Books are Rate Books issued by the Old Company and copies are on file at the office of the New Company at 523 West Sixth Street, Los Angeles, California, and in the offices of the Insurance Commissioners or similar public officials of each state in which the Old Company has been transacting insurance business.

Notwithstanding the foregoing limitation on the obligation of the New Company to make monthly disability payments on such policies,

370 there shall be no change or reduction in the original premium rates on such policies, and to be entitled to the reinsurance and assumption of his Non-Can Policy by the New Company as aforesaid, the policyholder shall be obligated to continue to make premium payments at the rate originally provided in his policy.

Restoration of Non-Can Benefits

371 8. The New Company shall be obligated to restore the monthly disability benefits originally provided in the Non-Can Policies reinsured and assumed under this agreement by applying, and only by applying, to such extent and in such manner and at such time or times as may be proposed by the New Company and approved by the Insurance Commissioner of the State of California as hereinafter provided, sums equivalent to the following:

372 (a) The net profits derived by the New Company from that portion of the business of its accident and health department represented by accident and health policies reinsured and assumed under this agreement, including all Non-Can Policies so reinsured and assumed hereunder; and

(b) The net profits derived by the New Company from that portion of the business of the nonparticipating branch of its life department represented by nonparticipating life insurance policies reinsured and assumed hereunder.

373 As of December 31, 1938, and tri-annually thereafter or at the time of the regular examination of the New Company by the Insurance Commissioner of the State of California, the New Company shall render to such Commissioner an accounting of the net profits, if any, arising from the sources referred to in (a) and (b) above, including the New Company's proposal as to the extent and manner of the application of sums equivalent to such net profits to the restoration of benefits on said Non-Can Policies. Any such proposal may include provision for proportionate restoration of commissions to agents, who through accepting the assumption of their contracts on the basis hereinafter provided, have received less commissions on such policies than they otherwise would have received. After the approval of any such proposal by said Commissioner with such changes as he may require therein, the New Company shall proceed to put 375 said proposal into effect. The extent and manner of the restoration, as provided in any such proposal so approved by said Commissioner, shall be binding upon all holders of said Non-Can Policies and other persons interested therein.

The holders of any such Non-Can Policies surrendered to the New Company in connection with any settlement thereunder shall not be entitled thereafter to any of the benefits of such restoration.

- 376 The holders of any such Non-Can Policies which shall have lapsed after the date of liquidation and which shall not have been reinstated either in accordance with their terms or in accordance with the provisions of this agreement, shall not be entitled thereafter to any of the benefits of such restoration.

Reinstatement of Lapsed Non-Can Policies

9. The provisions of paragraph 4 of this agreement with respect to reinstatement of lapsed
377 policies shall apply to Non-Can Policies, subject to the terms, conditions and limitations contained in paragraphs 6 and 7 hereof.

Payment of Claims on Non-Can Policies Filed
Prior to Date of Liquidation

10. The New Company shall be obligated to continue the payment of all disability benefits under Non-Can Policies, claims or notices of claims for which had been filed with the Old Company prior to the date of liquidation, and
378 all payments under settlement agreements made by the Old Company, with claimants under such policies, without any deduction or limitation whatsoever, but subject to all of the terms and provisions of such Non-Can Policies; and subject to any such settlement agreements; and subject, further, to any and all defenses, offsets, counter-claims, cross-complaints, and rescission rights against any such claim or claims, which would have been available to the Old Company had this agreement not been made.

379

Moratorium

11. The reinsurance and assumption of obligations by the New Company herein provided for are subject to the condition that the new Company shall not be required, prior to sixty (60) days, and such additional period as may be determined by the Commissioner, from and after the effective date of this agreement, to make policy loans (except for the purpose of paying premiums on the same policy or on additional policies issued on the same life), or to pay cash surrender values. This provision, however, shall not apply to any increase in values that are accumulated from premium payments or loan repayments which are received subsequent to the date of liquidation.

During such period as the moratorium is in effect the cash surrender option of all policies of the Old Company may be considered as non-existing, except as provided above, and all policyholders who do not pay their premiums and who are entitled to a guaranteed value will be restricted to the automatic nonforfeiture value (properly adjusted for any policy indebtedness and accrued interest thereon) under the policy. At the discretion of the New Company, however, the cash surrender value under any policy, properly adjusted for any policy indebtedness and accrued interest thereon, may be allowed whenever it appears, in the sole judgment of the New

381

382 Company, that the granting of such surrender value will be to the advantage and benefit of the Old Company policyholders as a class.

Assumption of Claims Against Old Company

12. The New Company hereby assumes and agrees to pay the following:

(a) All costs and expenses of the Commissioner in his capacities as conservator or liquidator of the Old Company, including attorneys' fees, as finally approved by the court;

383 (b) All unpaid taxes legally due the United States, the State of California, and other States, and Counties and Municipalities thereof, in connection with the business and assets of the Old Company, and remaining unpaid;

(c) Wages and salaries legally due to persons employed by the Old Company for services rendered and current bills for office supplies and incidental expenses in connection with the operation of the business of the Old Company and remaining unpaid;

384 (d) All claims against the Old Company filed with the Commissioner as liquidator, and finally allowed by the Commissioner and/or by the Court.

The obligation of the New Company with respect to items (a), (b), (c) and (d) above shall be to pay the same, in the order of preference established by law, and shall be limited, in the aggregate, to an amount equal to the value

385 of the assets of the Old Company transferred to
the New Company pursuant to this agreement,
on the basis of valuation provided in paragraph
13 of this agreement, less the amount of the
reserves established by the New Company, with
the approval or in accordance with the require-
ments of the Commissioner, with respect to poli-
cies of the Old Company reinsured and assumed
by the New Company hereunder, and with re-
spect to policy claims assumed by the New Com-
386 pany hereunder.

Valuation of Assets Transferred to New Company

13. The assets of the Old Company trans-
ferred to the New Company pursuant to this
agreement shall be valued at the amounts estab-
lished therefor in the so-called "Convention
Report" made in 1936 by the Commissioner and
similar officials of certain other states in which
387 the Old Company did business, with respect to
the condition of the Old Company, as of Decem-
ber 31, 1935.

Agents

14. The New Company hereby assumes, sub-
ject to the limitation and exception hereinafter
stated, any obligations under any contract here-
tofore made by the Old Company with any agent
(regardless of classification), manager, or super-
visor, it being recognized that the services of
the agents who produced, or under his direction

388 or supervision was produced, the business reinsured or assumed hereunder in servicing said business, and the maintaining of same in force as to the ultimate interest and advantage of the policyholders of the Old Company. However, the obligations of the Old Company to pay commissions on Non-Can Policies reinsured and assumed by the New Company, with the limitations as to disability benefits hereinbefore provided, shall be reduced as follows: (a) No commissions due after the date of liquidation shall 389 be paid on Non-Can Policies on all forms issued prior to and including Forms A291 to A294, both inclusive, and commissions due after the date of liquidation on all Non-Can Policies issued on all other forms, the holders of which accept and reinsure their assumption by the New Company on the reduced basis hereinbefore provided, shall be reduced in proportion to the reduction in disability benefits to the insured under such 390 policies. The New Company shall not assume or be bound by any agreement which the Old Company may have made with agents with respect to payment of commissions on policies after lapsation. To such extent, in such manner and at such time or times as may be proposed by the New Company and approved by the Insurance Commissioner of the State of California, as provided in paragraph 8 of this agreement, the New Company shall apply its net profits derived from the sources referred to in (a) and (b) of said

391 paragraph 8 to the restoration to agents of the amounts of the reduction in their commissions on policies referred to in (b) of this paragraph to which said agents would have otherwise been entitled.

Additional Payments on Allowed Claims and
Payments to Stockholders of Old Company

392 15. For a period of ten (10) years commencing January 1, 1937, the New Company shall pay to the Commissioner for the benefit of holders of claims filed with the Commissioner and finally allowed by him or by the court, until such claims shall have been paid in full, and thereafter for the benefit of and distribution to the stockholders of the Old Company, the net profits of the New Company derived from the sources referred to in (a) and (b) of paragraph 8 of this agreement remaining after:

393 (a) The holders of Non-Can Policies referred to in said paragraph 8 shall have been restored to the full benefits originally stated in their policies as provided in said paragraph; and

(b) The New Company shall have established such reserves as may be deemed necessary by the New Company and the Commissioner for proper depreciation of the assets allocated to, or held by, the New Company for the benefit of the departments referred to in (a) and (b) of said paragraph 8; and

(c) Restoring to surplus allocated to the participating life department of the New Company

394 the sum of \$1,792,118.97, or its equivalent, together with interest thereon to date of restoration at the average rate earned by the New Company during such period on its invested assets; and

(d) Creating a reserve or adding to the surplus of the New Company an amount equal to the amount of policy reserve for Non-Cancel Policies released by reason of lapsation of such policies reinsured and assumed hereunder in excess of a lapse rate of ten per cent (10%) per year, 395 or occasioned by substitutions or exchanges of such policies for other types of accident or health insurance:

At the end of said ten (10) year period, to-wit, on January 1, 1947, the New Company shall either (1) create a fund equal to \$10 per \$1000 of nonparticipating life insurance reinsured and assumed by the New Company under this agreement and then remaining in force, or, (2) until said fund shall be so created, pay an amount 396 equal to interest at the rate of six per cent (6%) per annum on an amount equal to said fund computed as aforesaid, which fund, and, until the creation thereof, said interest payments, shall be applied, first, to the extent necessary to complete the restoration and establishment of reserves referred to in (a), (b), (c) and (d) above, and, second, to the payment to the Commissioner to the extent necessary to pay any unpaid balance of claims filed with the Commissioner and finally allowed, and thereafter to

397 distribution pro rata to the stockholders of the Old Company.

Any such payments to stockholders of the Old Company, in accordance with the foregoing, shall either be made pro rata to such stockholders, as their interests may appear according to the stock ledgers of the Old Company, or the New Company may issue to the Commissioner or to such stockholders appropriate certificates of the New Company evidencing its obligation to make such
398 payments. Such certificates of interest may either be issued by the New Company to the Commissioner for distribution by him to stockholders of the Old Company in exchange for their stock certificates, or, at the election of the New Company, may be issued by the New Company directly to such stockholders upon the surrender of their stock certificates.

Mutualization of New Company

399 16. The New Company hereby consents to such plan for its voluntary mutualization in accordance with the laws of the State of California as now in effect or hereafter amended, as may be proposed by the Commissioner, as soon as legally possible; and the Commissioner agrees to propose such mutualization plan, as the holder of the stock of the New Company. Such mutualization plan shall contain such terms and provisions, not inconsistent with this agreement, as may be required by law or approved by the Commissioner and the New Company. The purchase

400 price paid by the New Company for the acquisition of its outstanding stock pursuant to such mutualization plan to the extent not required by the Commissioner as the holder of said stock for the satisfaction of claims against the Old Company, filed with the Commissioner and finally allowed, shall be repaid by the Commissioner to the New Company.

Notice

17. The New Company shall mail promptly
401 to the insured named in all policies and supplementary contracts of the Old Company in force at the date of liquidation, and any assignees thereof of record, a printed copy of the Rehabilitation, Sale and Transfer of Assets and Reinsurance Plan concerning the Old Company, including a copy of this agreement as executed, to which the New Company may attach its certificate of reinsurance and assumption, inserted in an envelope, first class postage prepaid, addressed to the name and address of each of the
402 persons aforesaid last shown upon the records of the Old Company. By "assignees of record" is meant assignees appearing upon the records of the Old Company at its Home Office.

Election of Policyholders and Claimants and Effect Thereof

18. Each policyholder and policy claimant of the Old Company may elect either to accept the reinsurance and assumption of his policy or con-

403 tract and/or any claim thereunder by the New Company, as provided in this agreement, or to file his claim against the Old Company with the Commissioner, in the manner provided by the Insurance Code of the State of California with respect to the filing of claims against an insurer in the process of liquidation. Persons so filing claims, who shall not withdraw them as hereinafter provided, are herein referred to as dissenting policyholders. The filing of a claim

404 by any dissenting policyholder shall remove the policy or contract in respect of which said claim shall be filed, and the claim of persons under such policy or contract from the benefit of the provisions of this agreement with respect to reinsurance and/or assumption, and shall constitute an irrevocable election, on the part of such policy or contract holder, and his beneficiary and all persons claiming under him, not to accept the benefit of such reinsurance and/or assumption

405 provisions unless such claim shall be withdrawn by the claimant at any time prior to the expiration of sixty (60) days from and after the date of the expiration of the time for filing claims, as provided by law, with the written consent of the New Company, in which event such policy or contract, and the persons interested in the benefits thereunder, shall be entitled to the benefit of such reinsurance and/or assumption provisions and shall be bound by this agreement.

406 Every person entitled to accept any benefit under this agreement, who shall have indicated his election so to do either by not filing any such claim, or by withdrawing such claim if filed, shall be considered as assigning to the New Company all his claims against the Old Company, and the benefits of any rights, securities, liens, or preferences to which he may be entitled by reason of his claims and also as so assigning all interest to which his claims may entitle him
407 in all of the assets of the Old Company, whether located in California or elsewhere. The New Company shall be entitled to assert and prosecute its claims, securities, liens or preferences of all holders of policies or contracts, issued or assumed by the Old Company, who so assent to or become bound by the provisions of this agreement, and the New Company shall be entitled to assert and obtain in such manner as it may deem best, any rights, securities, liens, or preferences
408 ences to which the holders of policies or contracts issued or assumed by the Old Company, who shall so assent to or become bound by the provisions of this agreement, would have had.

Each holder of any policy or contract issued or assumed by the Old Company, who shall not have filed his claim against the Old Company with the Commissioner in the manner and within the period required by law, shall be deemed ipso facto to have assented to and become bound by the provisions of this agreement, and entitled

409 to the benefits hereof, subject to all of its terms. No holder of any such policy or contract of the Old Company who shall be deemed to have assented to or become bound by the provisions of this agreement shall have any rights, securities, liens, or preferences not accorded by this agreement.

Right of the New Company to Prosecute
and Defend Claims

410 19. All claims or demands against the Old Company or its property now the subject of litigation in any court of competent jurisdiction in actions against the Old Company, and any and all claims and demands against the Old Company or its property filed with the Commissioner as liquidator, may be prosecuted and defended until final judgment, and the New Company shall have the right to assist and join in such defense through counsel selected and paid by the New Company, and with all defenses, offsets,
411 counterclaims, cross-complaints and rescission rights that might or could have been available to it, the Old Company, or to the Commissioner as liquidator, including all rights of appeal or review in whatsoever form.

Right of New Company to Settle or Pay
Claims Against Old Company

20. In order that claims against the Old Company may be disposed of as speedily and economically as possible, the New Company shall

- 412 have the right, with the approval of the Commissioner, to settle, compromise or compound any claim or demand against the Old Company or its property, whether or not such claim or demand shall have been filed with the Commissioner and to pay in discharge thereof such amount as may be mutually agreed upon, and if such claim or demand shall not have been so filed, with like force and effect as if such claim or demand had been duly filed with the Commissioner and finally
- 413 allowed as above set forth; provided, that no such settlement, compromise or compounding shall affect the right of the New Company to contest and litigate any other claims or demands of similar character.

Withholding of Assets

21. In the event of the institution of primary receivership or other proceedings in any of the states other than the State of California, wherein the Old Company has assets and in which proceedings the assets located in any such state are
- 414 liquidated and distributed exclusively to policyholders, creditors, stockholders or other persons resident of said state, such policyholders, creditors, stockholders and other persons interested in assets of the Old Company, who accept in any such proceeding their pro rata share of the distribution of the assets of the Old Company located in said state, shall not be entitled to the benefits provided in this agreement.

415 Interpretation of Agreement and Accountings
Thereunder

22. In the event of any dispute between the New Company and any person entitled to or who has elected to accept the benefits of this agreement, the determination by the Commissioner as to the interpretation of this agreement shall be conclusive and binding upon both parties to any such dispute. The accounting methods or procedure of the New Company in computing
- 416 any net profits, earnings or other amounts under this agreement and the amount and character of any and all reserves which may be established by the New Company under this agreement or in the course of its operations following the execution of this agreement, shall be subject to the approval of the Commissioner, and all such accounting matters and computations and amounts and characters of reserves when so approved by the Commissioner shall be conclusive
- 417 and binding upon the New Company and all persons entitled to any benefit under this agreement, including, but not limited to, persons who may have elected to file their claims with the Commissioner as liquidator.

Commissioner Not Personally Liable

23. The Commissioner is bound by the provisions of this agreement only in his capacity as such Commissioner and as conservator or liquidator of the Old Company. All undertakings and obligations herein set forth as under-

418 takings or obligations of the Commissioner are made by the Commissioner only in his said capacities and to such extent as he had authority to make the same, and the Commissioner makes no warranty of his authority to make the same. No personal liability on the part of the Commissioner is assumed under this agreement. :

Liabilities of New Company Limited by This Agreement

419 24. It is understood that the New Company does not assume any liability to any stockholders of the Old Company in any way arising out of or by virtue of their stock holdings in the Old Company, nor any liability of any character or description to creditors of the Old Company, whether policyholder creditors or others, except as and to the extent provided in this agreement; it being specifically understood that the New Company does not assume any liability of any character or description whatsoever of the Old
420 Company except as and to the extent in this agreement expressly provided, and the provisions of this agreement shall be a complete and adequate defense by the New Company to any action, other than an action to enforce the express provisions of this agreement, which may be brought by such stockholders or creditors above mentioned.

Amendments

25. This agreement may be amended at any time while the Commissioner remains liquidator

421 of the Old Company, by the consent of the Commissioner and the New Company, subject to the approval of the court.

Assignability of Agreement

26. This agreement and all rights, duties and obligations hereunder, shall inure to the benefit of and be binding upon the respective parties hereto, their several successors and assigns.

The original agreement, as hereby amended, is ratified, confirmed, approved and continued in
422 full force and effect.

In Witness Whereof, the New Company has caused this agreement to be executed by its president or vice president, attested by its secretary, and its corporate seal to be hereunto affixed, and the Commissioner has executed this agreement, the day and year first above written.

PACIFIC MUTUAL LIFE INSURANCE COMPANY.

By.....

Its President

423

Attest:

Its Secretary

"New Company"

As Insurance Commissioner of the State of California and liquidator of The Pacific Mutual Life Insurance Company of California.

"Commissioner"

Endorsed: Filed July 23, 1936. L. E. Lamp-ton, county clerk; by M. E. Howard, deputy.

424 [TITLE OF COURT AND CAUSE.]

Order Approving Amendment of Rehabilitation Sale and Transfer of Assets and Reinsurance Agreement.

° Upon reading and filing the verified application of Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, as liquidator of The Pacific Mutual Life Insurance Company of California, for order approving the amendment of Rehabilitation Sale and Transfer of Assets and Reinsurance Agreement dated July 22, 1936, and for authority to execute an amended Rehabilitation Sale and Transfer of Assets and Reinsurance Agreement for the purpose of giving effect to said amendment, and consent to the making of said amendment and execution of said amended agreement having been given by Pacific Mutual Life Insurance Company, and oral evidence having been taken and the court being fully advised in the premises and good cause appearing therefor:

The court finds that the proposed amendment and the execution of the proposed amended agreement is in the best interests of said Insurance Commissioner as liquidator aforesaid, and in the best interests of Pacific Mutual Life Insurance

427 Company and that said amendment and said amended agreement should forthwith be executed and put into effect:

It is therefore ordered, adjudged and decreed that the proposed amendment to the Rehabilitation Sale of Assets and Reinsurance Agreement dated July 22, 1936, be, and the same is, hereby approved;

428 It is further ordered that Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, as liquidator of The Pacific Mutual Life Insurance Company of California, be, and he is, hereby authorized and directed to execute for the purpose of making said amendment effective an amended Rehabilitation Sale and Transfer of Assets and Reinsurance Agreement substantially in the form attached to said application as
429 Exhibit "A".

Dated: July 23, 1936.

DOUGLAS L. EDMONDS,

Judge.

Endorsed: Filed Jul. 23, 1936. L. E. Lamp-ton, county clerk; by M. E. Howard, deputy.

Entered Jul. 24, 1936. Docketed Jul. 24, 1936, book 949, page 37, by I. Bottomley, deputy.

430 In the Superior Court of the state of California in and for the county of Los Angeles,

Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, petitioner, vs. The Pacific Mutual Life Insurance Company of California, a corporation, respondent, Pacific Mutual Life Insurance Company, a corporation, intervener. No. 404673.

**Petition for Intervention and for Order to
Show Cause.**

431

Comes now Pacific Mutual Life Insurance Company, a California corporation, and for its petition in intervention alleges:

I.

Your intervener is a corporation organized and existing under the laws of the state of California, and authorized and qualified to conduct a life, disability, liability, common carrier and workman's compensation insurance business.

432

II.

On or about the 22nd day of July, 1936, Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, pursuant to application duly made by him, was duly appointed conservator of The Pacific Mutual Life Insurance Company of California, the respondent corporation herein. Subsequently, and upon the same day, on application duly made by him, he was duly appointed liquidator of said corpora-

433 tion and duly ordered to wind up and liquidate
the business thereof. Subsequent thereto, and on
or about the same day, said Samuel L. Carpenter,
Jr., as such Insurance Commissioner of the
State of California and as such liquidator, duly
presented to this court a proposed plan and agree-
ment of rehabilitation, sale and transfer of as-
sets and reinsurance of said The Pacific Mutual
Life Insurance Company of California, a copy
of which said plan and agreement is attached
434 hereto as Exhibit A. Thereafter, upon said day,
this court made its order wherein, among other
things, it permitted, approved and authorized said
plan and agreement of rehabilitation, sale and
transfer of assets and reinsurance and directed
that the same be carried out in all its par-
ticulars.

III.

Pursuant to directions contained in said order,
said Commissioner and liquidator caused your
435 intervener to be duly organized and subscribed
to the stock thereof, all as proposed in said plan
and directed by said order. Further, said Com-
missioner and liquidator and your intervener, as
directed by ~~said order~~, executed an agreement
substantially in the form set forth in said plan
and agreement presented to this court, a copy
of which agreement, as executed, is attached
hereto as Exhibit B; and said Commissioner and
liquidator duly transferred and set over to your

436 intervener by deed and bill of sale all of the assets of said The Pacific Mutual Life Insurance Company of California then vested in him as such liquidator, with certain exceptions provided for in said agreement and in said deed and bill of sale, a copy of which said deed and bill of sale, as executed by said Commissioner and liquidator and by respondent corporation and by your intervener, is attached hereto as Exhibit C. As directed by said order above mentioned, your
437 intervener has commenced and is now carrying on the business of an insurance company as permitted by its articles of incorporation and by the laws of the State of California. Pursuant to petition filed by said Commissioner and liquidator, this court made its order on July 23, 1936, approving a certain amendment to the above mentioned agreement attached hereto as Exhibit B, and authorizing and directing, in order to make effective said amendment, the execution of the
438 amended agreement referred to in said order, which amended agreement has been duly executed by said Commissioner and liquidator and by your intervener, and a copy thereof as so executed and as delivered is attached hereto and marked Exhibit D.

IV.

Your intervener believes that it is desirable, as a further assurance and confirmation of the titles heretofore conveyed and transferred, that the adoption of said plan and agreement of re-

439 habilitation, sale and transfer of assets and re-
insurance by your intervener and by said Com-
missioner and liquidator, the execution of said
agreement and amended agreement by your inter-
vener and said liquidator and the transfer of
said assets from said liquidator to your inter-
vener and the execution of said deed and bill of
sale should be confirmed and approved by this
court after a hearing held upon order to show
cause directed to all interested parties, wherein
440 they may have opportunity to express any objec-
tions they might have to such confirmation and
approval. Wherefore your intervener has an
interest in the matters being considered in the
proceeding herein and desires that the relief
hereinafter prayed for be granted. Your inter-
vener further believes it to be desirable that a
hearing be had upon the fairness of the terms
and conditions upon which it is proposed, pur-
suant to said plan and/or agreement, to issue
441 and exchange securities in exchange for one or
more *bona fide* outstanding securities, claims or
property interests, or partly in such exchange
and partly for cash, at which hearing all persons
to whom it is proposed to issue securities in
such exchange shall have the right to appear.

V.

Respondent herein, prior to the appointment of
said Commissioner as conservator and liquidator
thereof, had obligations on insurance policies is-
sued and outstanding in excess of \$600,000,000

442 insuring the lives and condition of health of
approximately 200,000 or more persons, and also
had accident and health policies outstanding in-
suring approximately an additional 75,000 per-
sons; some or all of which said policies have
been or will be assumed and reinsured by your
intervener under the terms of said plan and
agreement. Intervener is also informed and
believes that said respondent corporation has
approximately 2,800 stockholders. There is also
443 a large group of persons who have or may have
claims of other nature against said respondent
corporation and said Commissioner, as liquidator
thereof, all or part of which have been or will
be assumed by your intervener under the terms
of said plan and agreement.

By reason of the number of such persons and
the further fact that many of them are residents
of states other than California, your intervener
believes it is impracticable and impossible to make
444 personal service of notice of hearing upon an
order to show cause upon all of said persons.
The matters herein being of a common or gen-
eral interest to said persons and separately to
each group thereof, your intervener believes that
one or more persons from each group should be
personally served with notice of said hearing.

Wherefore, your intervener prays:

1. That this court grant to your intervener
leave to intervene herein as a party plaintiff and
to file herein this its said petition;

445 2. That this court issue its order to show
cause, directed to all policyholders, stockholders
and creditors of The Pacific Mutual Life Insur-
ance Company of California to appear before
this court upon a day to be set by said court to
show cause, if any they have, why this court
should not make its order (a) confirming and
approving, and ratifying the permission given
with respect to, said plan and agreement of re-
446 habilitation, sale and transfer of assets and re-
insurance and the carrying out of the terms
thereof, (b) confirming and approving the action
of your intervener and said Commissioner in
executing and delivering the agreement provided
for under said plan, a copy of which agreement
is attached hereto as Exhibit B, and the amended
agreement, a copy of which is hereto attached
as Exhibit D, and the carrying out of the terms
thereof, (c) confirming and approving the execu-
tion and delivery of the deed and bill of sale
447 above mentioned, a copy of which is attached
hereto as Exhibit C, and the action of said Com-
missioner in transferring to your intervener all
of the assets of respondent corporation the title
to which was vested in him as liquidator, except
the stock of your intervener and except any and
all rights or claims of whatsoever nature which
respondent corporation or the liquidator, in his
capacity as liquidator of respondent corporation,
may have against any of the present or past
officers, directors or employees, as such, of re-

448 spondent corporation, or against any other person, firm or corporation, by reason of wrongful or illegal acts or omissions of any of the past or present officers, directors or employees of respondent corporation, including rights or claims on any fidelity or surety bond or bonds given to or in favor of respondent corporation to secure the faithful performance by any of its officers, directors or employees of any of their duties as such, and (d) approving the terms and conditions upon which said plan and agreement proposes the issuance and exchange of securities, after a hearing upon the fairness of such terms, and conditions, at which all persons to whom it is proposed to issue securities in such exchange shall have the right to appear;

3. That this court prescribe the time and manner of notice, and the persons or classes of persons to whom such notice shall be directed, upon said order to show cause, including, if the 450 court be so advised, the determination of such representatives of the various groups of interested parties involved who shall be given such notice as representatives of such groups.

PACIFIC MUTUAL LIFE INSURANCE COMPANY.

By A. N. KEMP,

Its President,

Intervener.

ASA V. CALL,

O'MELVENY, TULLER & MYERS,

Attorneys for Intervener.

451 State of California, county of Los Angeles—ss.

A. N. Kemp, being first duly sworn, deposes and says: That he is the president of Pacific Mutual Life Insurance Company, a corporation, the intervener in the above entitled matter, and makes this verification for and on behalf of said corporation.

452 That affiant has read the foregoing petition for intervention and for order to show cause and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated on information or belief, and as to such matters he believes it to be true.

A. N. KEMP.

Subscribed and sworn to before me this 23rd day of July, 1936.

(Seal)

E. W. MUHSFELD,

453 *Notary Public in and for the County of
Los Angeles, State of California.*

My commission expires June 27, 1940.

[For copy of Exhibit A attached hereto see copy of Rehabilitation, Sale, etc., heretofore printed.]

454

EXHIBIT B.

REHABILITATION, SALE AND TRANSFER OF
ASSETS AND REINSURANCE AGREEMENT

Between

PACIFIC MUTUAL LIFE INSURANCE COMPANY

And

SAMUEL L. CARPENTER, JR.

As Insurance Commissioner of the State of
California and as Liquidator of

THE PACIFIC MUTUAL LIFE INSURANCE
COMPANY OF CALIFORNIA

455

Dated July 22, 1936.

REHABILITATION, SALE AND TRANSFER OF
ASSETS AND REINSURANCE AGREEMENT.

This Agreement, made and entered into this
22nd day of July, 1936, between Pacific Mutual
Life Insurance Company, a California corpora-
456 tion; and Samuel L. Carpenter, Jr., as Insurance
Commissioner of the State of California and as
liquidator of The Pacific Mutual Life Insurance
Company of California, a California corporation,

Witnesseth:

Whereas, an order was entered in the Superior
Court of the State of California in and for the
County of Los Angeles on the 22nd day of July,
1936, in a proceeding entitled "Samuel L. Car-
penter, Jr., Insurance Commissioner of the State

457 of California, Petitioner, vs. The Pacific Mutual Life Insurance Company of California, a corporation, Respondent," by which the court found that The Pacific Mutual Life Insurance Company of California was in such condition that its further transaction of business would be hazardous to its policyholders, creditors and to the public, and that said Company was insolvent within the meaning of Article 13, Chapter 1, Part 2, Division 1, of the Insurance Code of the State of
458 California, and by which said order title to all of the assets of said Company, wheresoever situated, was vested in Samuel L. Carpenter, Jr., in his official capacity as Insurance Commissioner of the State of California, and by which order said Commissioner was directed forthwith to take possession of all of the books, records, property, real and personal, and assets of said Company and to conduct as conservator the business of said Company, and enjoining said Company and
459 its officers, directors, agents, servants and employees from the transaction of its business or disposition of its property until the further order of said court, and pursuant to said order said Commissioner has become vested with the title to and did take possession of all of the books, records, property, real and personal, and assets of said Company; and

Whereas, said Commissioner as conservator as aforesaid, did thereafter apply to said court for an order for the liquidation of said Company

460 and for an order directing the Commissioner to formulate and submit a plan and agreement of rehabilitation and reinsurance which, in the judgment of the Commissioner, would best preserve the value of the estate in liquidation, provide for the removal of the causes which made the proceeding necessary, and most fairly and equitably protect the rights and claims of all persons interested therein; and

Whereas, said court thereafter made and entered an order for the liquidation of said Company, appointing the Commissioner as liquidator thereof, and as such vested with title to all of the assets of said Company, and directing the Commissioner to file such a plan; and

Whereas, said Commissioner submitted to said court a Rehabilitation, Sale and Transfer of Assets and Reinsurance Plan and Agreement, of which this agreement is a part, alleging that said plan and agreement will preserve the value of the assets in liquidation, is fair and equitable to the policyholders, creditors and stockholders of said Company, and protects the legal rights of all interested parties as they now exist; and

Whereas, thereafter said court made and entered an order approving said plan and agreement, and finding that said plan and agreement is fair and equitable and protects the existing legal rights of the policyholders, creditors and stockholders of said Company, and directing that

463 the Commissioner proceed to consummate said plan and execute this agreement;

Now, Therefore, in consideration of the premises and of the respective undertakings of the parties hereto, It Is Hereby Agreed:

Definitions

1. The parties to this agreement and the persons mentioned herein will be referred to and certain terms used herein are hereby defined as follows:

464

Samuel L. Carpenter, Jr., in his capacity as Insurance Commissioner of the State of California and as liquidator of The Pacific Mutual Life Insurance Company of California, and any successor Commissioner and liquidator, will be referred to as "Commissioner."

The Pacific Mutual Life Insurance Company of California will be referred to as the "Old Company."

465

Pacific Mutual Life Insurance Company will be referred to as the "New Company."

The Superior Court of the State of California in and for the County of Los Angeles will be referred to as the "Court."

The date and hour of entry of said order of liquidation, to wit, July 22, 1936, at one o'clock P. M. Pacific Standard Time, will be referred to as the "date of liquidation."

This agreement shall be deemed to have been executed and shall be effective as of the date

466 and hour of entry of said order of liquidation, and said date and hour will be referred to as the "effective date of this agreement."

The phrase "assets of the Old Company" or any similar phrase used in this agreement shall be deemed to mean all books, records, property, real and personal, tangible and intangible, and all other assets of every kind, character and description whatsoever, and wheresoever situated, owned by the Old Company at the time of the
467 appointment of the Commissioner as conservator which shall not have been applied by him against his subscription for stock of the New Company or disposed of by him in the due course of his administration as conservator or in his administration as liquidator of the Old Company, plus all property acquired by the Commissioner in either of said capacities and the income therefrom collected by him, except (a) the stock of the New Company held by him, and (b) any and all
468 rights or claims of whatsoever nature which the Old Company or the Commissioner, in his capacity as liquidator of the Old Company, may have against any of the present or past officers, directors or employees, as such, of the Old Company, or against any other person, firm or corporation, by reason of wrongful or illegal acts or omissions of any of the past or present officers, directors or employees of the Old Company, including rights or claims on any fidelity or surety bond or bonds given to or in favor of the Old

469 Company to secure the faithful performance by any of its officers, directors or employees of any of their duties as such.

Outstanding policies of the Old Company known as its Non-Cancelable Income Policies, including the Aggregate form thereof, will be referred to as "Non-Can Policies."

Transfer of Assets

2. The Commissioner shall grant, bargain, 470 sell, assign, convey, transfer, set over and deliver to the New Company the assets of the Old Company.

The Commissioner shall not be required to make manual delivery of any cash or securities deposited by the Old Company with any governmental authority as a condition to the conduct of its business, but shall only be required to assign his interest therein, subject to the terms of such deposit.

471 The Commissioner shall transfer and deliver to the New Company the full amount of all premiums paid to the Commissioner on any policy reinsured and assumed hereunder which have been paid in to the Commissioner on or after the date of liquidation; and the New Company shall credit the holder of such policy with the payment of such premiums accordingly, subject to repayment as hereinafter provided in the event the holder of such policy shall elect not to accept such reinsurance and assumption by the New

472 Company. The New Company shall repay to the Commissioner upon demand any premium received by the New Company hereunder from the Commissioner which was paid by or on behalf of the insured after the date of liquidation to the Commissioner, if the policyholder has filed or shall file a claim in accordance with the Commissioner's notice requiring the filing of claims in the above mentioned cause, and the court shall direct the Commissioner to return the premium

473 so paid.

Subsequent to the effective date of this agreement and for such period of time as the Commissioner may determine, no investment or reinvestment of the assets of the Old Company transferred to the New Company pursuant to this agreement shall be made without first obtaining the written approval of the Commissioner. The Commissioner hereby agrees that said period shall in no event exceed six months from and
474 after the effective date of this agreement.

Reinsurance and Assumption of Policies Other Than Non-Can Policies.

3. The New Company does hereby reinsure and assume, as of the date of liquidation, with the exception hereinafter provided, the liability of the Old Company under all life, endowment annuity and term policies and contracts of insurance, and all other policies and contracts of insurance, including, without limiting the same to,

475 health and accident benefits, waiver of premium disability benefits, permanent and total disability benefits, and all supplementary contracts, annuity contracts and all reinsurance contracts, issued or assumed by the Old Company and outstanding and in force on the books and records of the Old Company at the date of liquidation, subject, however, to any and all defenses, offsets, counter-claims, cross-complaints and rescission rights against said policies or contracts or against any 476 claims and actions thereon, which would have been available to the Old Company had this agreement not been made; provided, however, that all outstanding Non-Can Policies are not reinsured or assumed under this paragraph and are hereby expressly excepted from the obligations of the New Company under this paragraph. The determination by the New Company as to the validity of any policy claim on policies reinsured and assumed under this paragraph and the 477 payment thereof shall be binding upon all persons so reinsured hereunder.

Reinstatement of Lapsed Policies

4. The New Company will reinstate any policies heretofore issued, assumed or reinsured by the Old Company, which are not excepted from the obligations of the New Company contained in the foregoing paragraph and which at the date of liquidation, by their terms, were entitled to reinstatement, provided that all requirements

478 necessary to procure a reinstatement of said policies under their terms are fulfilled to the satisfaction of the New Company.

The New Company will also reinstate, during the lifetime of the insured and provided the insured is not in such condition as to be eligible for benefits under the policy, without evidence of insurability, any of said policies, with the afore-said exception, which have lapsed since the date 479 of liquidation, upon written application therefor by the insured and the payment of all premiums in arrears, if such application is made and premiums are paid within sixty (60) days after the effective date of this agreement. Upon the reinstatement of such lapsed policy it shall, for all purposes, be treated the same as if it had been in force on the date of liquidation and be subject to the terms and conditions of this agree- 480 ment.

Payment of Policy Claims Other Than Claims on Non-Can Policies

5. The New Company will pay in full, in accordance with the terms and conditions of the policies or other contracts under which the claims shall have been or may be made, and whether or not the claims arose or matured prior or subsequent to the date of liquidation, all claims (ex-

481 cept claims on Non-Can Policies) including, without limiting the same to, claims for death benefits, matured endowments, annuity payments, permanent total disability and premium waiver benefits, accident and sickness benefits, payments under policy settlement agreements, policy dividends left at interest with the Old Company prior to the date of liquidation, and payments under all other matured contracts under which the proceeds of policies and contracts were left with the
482 Old Company prior to the date of liquidation; subject, however, to any and all defenses, offsets, counter-claims, cross-complaints and rescission rights against any such claim or claims which would have been available to the Old Company had this agreement not been made.

Reinsurance and Assumption of Non-Can Policies

483 6. The New Company does hereby reinsure and assume, as of the date of liquidation, the liability of the Old Company under all Non-Can Policies issued by the Old Company and outstanding and in force on the books and records of the Old Company at the date of liquidation, subject, however, to the terms, conditions and limitations, and only to the extent hereinafter specifically provided and subject, further, to any

484 and all defenses, offsets, counterclaims, cross-complaints, and rescission rights against such policies or any claims and actions thereon which would have been available to the Old Company had this agreement not been made. The determination by the New Company as to the validity of any policy claim on policies reinsured and assumed under this paragraph and the payment thereof shall be binding upon all persons so 485 reinsured hereunder.

Terms, Conditions, Limitations and Extent of
Reinsurance and Assumption of Non-Can
Policies

7. The obligation of the New Company with respect to the payment of monthly disability benefits on claims either filed or notice of which is filed with the New Company or any of its predecessors at any time after the date of liquidation under Non-Can Policies reinsured and assumed under the preceding paragraph, subject to restoration as provided in paragraph 8. hereof, shall be limited to payment of the following percentages of the monthly disability benefits originally provided under said policies, according to the following premium classes, respectively:

486

487 Premium Class of Policy — Percentage of Original
Monthly Benefit
Assumed By
New Company

1918 Premium class

Issued under Rate Books:

A 1445, A 1445 Z, A 1445 Y,

A 1445 X and A 1445 W. 20%

in period from:

August, 1918—September, 1921

488 1921 Premium class

Issued under Rate Books:

A 1687, A 1687 Z, A 1687 Y,

A 1687 X, A 1687 W. 35%

in period from:

September, 1921—July, 1926.

1926 Premium class

Issued under Rate Books:

A 1958, A 1958 Z, A 1958 Y, 45%

in period from:

489 July, 1926—February, 1929.

1929 Premium class

Issued under Rate Books:

A 2293 55%

in period from:

February, 1929—January, 1931

1931 Premium class

Issued under Rate Books:

A 2367 65%

in period from:

January, 1931—March, 1932.

490 1932 Premium class

Issued under Rate Books:

A 2432, A 2432 Z, A 2499 90%

in period from:

March, 1932—February, 1935.

Aggregate policy

Issued under Rate Books:

A 2499, A 2567 90%

in period from:

October, 1933—July, 1935.

- 491** Note: All of the above mentioned Rate Books are Rate Books issued by the Old Company and copies are on file at the office of the New Company at 523 West Sixth Street, Los Angeles, California, and in the offices of the Insurance Commissioners or similar public officials of each state in which the Old Company has been transacting insurance business.

- 492** Notwithstanding the foregoing limitation on the obligation of the New Company to make monthly disability payments on such policies, there shall be no change or reduction in the original premium rates on such policies, and to be entitled to the reinsurance and assumption of his Non-Can Policy by the New Company as aforesaid, the policyholder shall be obligated to continue to make premium payments at the rate originally provided in his policy.

493

Restoration of Non-Can Benefits

8. The New Company shall be obligated to restore the monthly disability benefits originally provided in the Non-Can Policies reinsured and assumed under this agreement by applying, and only by applying, to such extent and in such manner and at such time or times as may be proposed by the New Company and approved by the Insurance Commissioner of the State of California as hereinafter provided, sums equivalent to the fol-

494 lowing:

(a) The net profits derived by the New Company from that portion of the business of its accident and health department represented by accident and health policies reinsured and assumed under this agreement, including all Non-Can Policies so reinsured and assumed hereunder; and

495

(b) The net profits derived by the New Company from that portion of the business of the nonparticipating branch of its life department represented by nonparticipating life insurance policies reinsured and assumed hereunder.

As of December 31, 1938, and tri-annually thereafter or at the time of the regular examination of the New Company by the Insurance Commissioner of the State of California, the New Company shall render to such Commissioner an accounting of the net profits, if any, arising from the sources referred to in (a) and (b)

496 above, including the New Company's proposal as to the extent and manner of the application of sums equivalent to such net profits to the restoration of benefits on said Non-Can Policies. Any such proposal may include provision for proportionate restoration of commissions to agents, who through accepting the assumption of their contracts on the basis hereinafter provided, have received less commissions on such policies than they otherwise would have received. After the
497 approval of any such proposal by said Commissioner with such changes as he may require therein, the New Company shall proceed to put said proposal into effect. The extent and manner of the restoration, as provided in any such proposal so approved by said Commissioner, shall be binding upon all holders of said Non-Can Policies and other persons interested therein.

The holders of any such Non-Can Policies surrendered to the New Company in connection with
498 any settlement thereunder shall not be entitled thereafter to any of the benefits of such restoration.

The holders of any such Non-Can Policies which shall have lapsed after the date of liquidation and which shall not have been reinstated either in accordance with their terms or in accordance with the provisions of this agreement, shall not be entitled thereafter to any of the benefits of such restoration.

499 Reinstatement of Lapsed Non-Can Policies

9. The provisions of paragraph 4 of this agreement with respect to reinstatement of lapsed policies shall apply to Non-Can Policies, subject to the terms, conditions and limitations contained in paragraphs 6 and 7 hereof.

Payment of Claims on Non-Can Policies Filed
Prior to Date of Liquidation

500 10. The New Company shall be obligated to continue the payment of all disability benefits under Non-Can Policies, claims or notices of claims for which had been filed with the Old Company prior to the date of liquidation, and all payments under settlement agreements made by the Old Company with claimants under such policies, without any deduction or limitation whatsoever, but subject to all of the terms and provisions of such Non-Can Policies, and subject to any such settlement agreements; and subject,
501 further, to any and all defenses, offsets, counter-claims, cross-complaints, and rescission rights against any such claim or claims, which would have been available to the Old Company had this agreement not been made.

Moratorium

11. The reinsurance and assumption of obligations by the New Company herein provided for are subject to the condition that the New Company shall not be required, prior to sixty (60) days, and such additional period as may be

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209

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502 determined by the Commissioner, from and after the effective date of this agreement, to make policy loans (except for the purpose of paying premiums on the same policy or on additional policies issued on the same life), or to pay cash surrender values. This provision, however, shall not apply to any increase in values that are accumulated from premium payments or loan repayments which are received subsequent to the date of liquidation.

503 During such period as the moratorium is in effect the cash surrender option of all policies of the Old Company may be considered as non-existing, except as provided above, and all policyholders who do not pay their premiums and who are entitled to a guaranteed value will be restricted to the automatic nonforfeiture value (properly adjusted for any policy indebtedness and accrued interest thereon) under the policy. At the discretion of the New Company, how-

504 ever, the cash surrender value under any policy, properly adjusted for any policy indebtedness and accrued interest thereon, may be allowed whenever it appears, in the sole judgment of the New Company, that the granting of such surrender value will be to the advantage and benefit of the Old Company policyholders as a class.

• Assumption of Claims Against Old Company

12. The New Company hereby assumes and agrees to pay the following:

505 (a) All costs and expenses of the Commissioner in his capacities as conservator or liquidator of the Old Company, including attorneys' fees, as finally approved by the court;

(b) All unpaid taxes legally due the United States, the State of California, and other States, and Counties and Municipalities thereof, in connection with the business and assets of the Old Company, and remaining unpaid;

506 (c) Wages and salaries legally due to persons employed by the Old Company for services rendered and current bills for office supplies and incidental expenses in connection with the operation of the business of the Old Company and remaining unpaid;

(d) All claims against the Old Company filed with the Commissioner as liquidator, and finally allowed by the Commissioner and/or by the Court.

507 The obligation of the New Company with respect to items (a), (b), (c) and (d) above shall be to pay the same, in the order of preference established by law, and shall be limited, in the aggregate, to an amount equal to the value of the assets of the Old Company transferred to the New Company pursuant to this agreement, on the basis of valuation provided in paragraph 13 of this agreement, less the amount of the reserves established by the New Company, with the approval or in accordance with the requirements of

508 the Commissioner, with respect to policies of the Old Company reinsured and assumed by the New Company hereunder, and with respect to policy claims assumed by the New Company hereunder.

Valuation of Assets Transferred to New Company

• 13. The assets of the Old Company transferred to the New Company pursuant to this agreement shall be valued at the amounts established therefor in the so-called "Convention Report" made in 1936 by the Commissioner and similar officials of certain other states in which the Old Company did business, with respect to the condition of the Old Company, as of December 31, 1935.

Agents

14. The New Company hereby assumes, subject to the limitation and exception hereinafter stated, any obligations under any contract heretofore made by the Old Company with any agent (regardless of classification), manager, or supervisor, it being recognized that the services of the agents who produced, or under his direction or supervision was produced, the business reinsured or assumed hereunder in servicing said business, and the maintaining of same in force as to the ultimate interest and advantage of the policyholders of the Old Company. However, the obligations of the Old Company to pay commissions on Non-Can Policies reinsured and as

- 511 sumed by the New Company, with the limitations as to disability benefits hereinbefore provided, shall be reduced as follows: (a) No commissions due after the date of Liquidation shall be paid on Non-Can Policies on all forms issued prior to and including Forms A291 to A294, both inclusive, and commissions due after the date of liquidation on all Non-Can Policies issued on all other forms, the holders of which accept and reinsure their assumption by the New Com-
- 512 pany, on the reduced basis hereinbefore provided, shall be reduced in proportion to the reduction in disability benefits to the insured under such policies. The New Company shall not assume or be bound by any agreement which the Old Company may have made with agents with respect to payment of commissions on policies after lapsation. To such extent, in such manner and at such time or times as may be proposed by the New Company and approved by the Insurance
- 513 Commissioner of the State of California, as provided in paragraph 8 of this agreement, the New Company shall apply its net profits derived from the sources referred to in (a) and (b) of said paragraph 8 to the restoration to agents of the amounts of the reduction in their commissions on policies referred to in (b) of this paragraph to which said agents would have otherwise been entitled.

514 Additional Payments on Allowed Claims and
Payments to Stockholders of Old Company

15. For a period of ten (10) years commencing January 1, 1937, the New Company shall pay to the Commissioner for the benefit of holders of claims filed with the Commissioner and finally allowed by him or by the court, until such claims shall have been paid in full, and thereafter for the benefit of and distribution to the stockholders of the Old Company, the net profits of the New
515 Company derived from the sources referred to in (a) and (b) of paragraph 8 of this agreement remaining after:

(a) The holders of Non-Can Policies referred to in said paragraph 8 shall have been restored to the full benefits originally stated in their policies as provided in said paragraph; and

(b) The New Company shall have established such reserves as may be deemed necessary by the New Company and the Commissioner for proper
516 depreciation of the assets allocated to, or held by, the New Company for the benefit of the departments referred to in (a) and (b) of said paragraph 8; and

(c) Restoring to surplus allocated to the participating life department of the New Company the sum of \$1,792,118.97, or its equivalent, together with interest thereon to date of restoration at the average rate earned by the New Company during such period on its invested assets; and

517 (d) Creating a reserve or adding to the surplus of the New Company an amount equal to the amount of policy reserve for Non-Can Policies released by reason of lapsation of such policies reinsured and assumed hereunder in excess of a lapse rate of ten per cent (10%) per year, or occasioned by substitutions or exchanges of such policies for other types of accident or health insurance.

At the end of said ten (10) year period, to
518 wit, on January 1, 1947, the New Company shall create a fund equal to \$10 per \$1000 of non-participating life insurance reinsured and assumed by the New Company under this agreement and then remaining in force, which fund shall be applied, first, to the extent necessary to complete the restoration of holders of Non-Can Policies reinsured and assumed by the New Company hereunder to the benefits originally provided in their policies in such manner and
519 to such extent as may be approved by the Commissioner and subject to the other limitations prescribed in paragraph 8 of this agreement, and, second, to the Commissioner for the benefit of claims filed with the Commissioner and finally allowed, and thereafter for the benefit of and distribution to the stockholders of the Old Company.

In lieu of creating said fund on January 1, 1947, as aforesaid, the New Company may at its option, apply to the aforesaid purposes a sum

520 equal to interest at the rate of six per cent (6%) per annum on an amount equal to said fund computed as aforesaid, until such time as the New Company may elect to create the principal of said fund and apply the same as aforesaid. If the New Company shall elect on January 1, 1947, to pay and apply a sum equal to interest on said fund as aforesaid, then such payment shall be applied in the same manner as, and shall be deemed to be in lieu of the application of the Old Company's net profits as provided in paragraph 8 of this agreement and the Old Company's obligations with respect to application of said net profits as provided under said paragraph 8 shall terminate.

Any such payments to stockholders of the Old Company, in accordance with the foregoing, shall either be made pro rata to such stockholders, as their interests may appear according to the stock ledgers of the Old Company, or the New Company may issue to the Commissioner or to such stockholders appropriate certificates of the New Company evidencing its obligation to make such payments. Such certificates of interest may 522 either be issued by the New Company to the Commissioner for distribution by him to stockholders of the Old Company in exchange for their stock certificates, or, at the election of the New Company, may be issued by the New Company directly to such stockholders upon the surrender of their stock certificates.

523

Mutualization of New Company

16. The New Company hereby consents to such plan for its voluntary mutualization in accordance with the laws of the State of California as now in effect or hereafter amended, as may be proposed by the Commissioner, as soon as legally possible; and the Commissioner agrees to propose such mutualization plan, as the holder of the stock of the New Company. Such mutualization plan shall contain such terms and
524 provisions, not inconsistent with this agreement, as may be required by law or approved by the Commissioner and the New Company. The purchase price paid by the New Company for the acquisition of its outstanding stock pursuant to such mutualization plan to the extent not required by the Commissioner as the holder of said stock for the satisfaction of claims against the Old Company, filed with the Commissioner and finally allowed, shall be repaid by the Com-
525 missioner to the New Company.

Notice

17. The New Company shall mail promptly to the insured named in all policies and supplementary contracts of the Old Company in force at the date of liquidation, and any assignees thereof of record, a printed copy of the Rehabilitation, Sale and Transfer of Assets and Reinsurance Plan concerning the Old Company, including a copy of this agreement as executed, to which the New Company may attach its cer-

526 tificate of reinsurance and assumption, inserted in an envelope, first class postage prepaid, addressed to the name and address of each of the persons aforesaid last shown upon the records of the Old Company. By "assignees of record" is meant assignees appearing upon the records of the Old Company at its Home Office.

Election of Policyholders and Claimants and
Effect Thereof

18. Each policyholder and policy claimant
527 of the Old Company may elect either to accept the reinsurance and assumption of his policy or contract and/or any claim thereunder by the New Company, as provided in this agreement, or to file his claim against the Old Company with the Commissioner, in the manner provided by the Insurance Code of the State of California with respect to the filing of claims against an insurer in the process of liquidation. Persons so filing
528 claims, who shall not withdraw them as herein after provided, are herein referred to as dissenting policyholders. The filing of a claim by any dissenting policyholder shall remove the policy or contract in respect of which said claim shall be filed, and the claim of persons under such policy or contract from the benefit of the provisions of this agreement with respect to reinsurance and/or assumption, and shall constitute an irrevocable election, on the part of such policy or contract holder, and his beneficiary and all persons claiming under him, not to accept the benefit of such reinsurance and/or assumption

529 provisions unless such claim shall be withdrawn by the claimant at any time prior to the expiration of sixty (60) days from and after the date of the expiration of the time for filing claims, as provided by law, with the written consent of the New Company, in which event such policy or contract, and the persons interested in the benefits thereunder, shall be entitled to the benefit of such reinsurance and/or assumption provisions and shall be bound by this agreement.

530 Every person entitled to accept any benefit under this agreement, who shall have indicated his election so to do either by not filing any such claim, or by withdrawing such claim if filed, shall be considered as assigning to the New Company all his claims against the Old Company, and the benefits of any rights, securities, liens, or preferences to which he may be entitled by reason of his claims and also as so assigning all interest to which his claims may entitle him in all of the

531 assets of the Old Company, whether located in California or elsewhere. The New Company shall be entitled to assert and prosecute its claims, securities, liens or preferences of all holders of policies or contracts, issued or assumed by the Old Company, who so assent to or become bound by the provisions of this agreement, and the New Company shall be entitled to assert and obtain in such manner as it may deem best, any rights, securities, liens, or preferences to which the holders of policies or contracts issued or assumed by the Old Company, who shall so assent

532 to or become bound by the provisions of this agreement, would have had.

Each holder of any policy or contract issued or assumed by the Old Company, who shall not have filed his claim against the Old Company, with the Commissioner in the manner and within the period required by law, shall be deemed ipso facto to have assented to and become bound by the provisions of this agreement, and entitled to the benefits hereof, subject to all of its terms.

533. No holder of any such policy or contract of the Old Company who shall be deemed to have assented to or become bound by the provisions of this agreement shall have any rights, securities, liens, or preferences not accorded by this agreement.

Right of the New Company to Prosecute and Defend Claims

534 19. All claims or demands against the Old Company or its property now the subject of litigation in any court of competent jurisdiction in actions against the Old Company, and any and all claims and demands against the Old Company or its property filed with the Commissioner as liquidator, may be prosecuted and defended until final judgment, and the New Company shall have the right to assist and join in such defense through counsel selected and paid by the New Company, and with all defenses, offsets, counter-claims, cross-complaints and rescission rights that might or could have been available to it, the Old

535 Company, or to the Commissioner as liquidator, including all rights of appeal or review in whatsoever form.

Right of New Company to Settle or Pay Claims
Against Old Company

20. In order that claims against the Old Company may be disposed of as speedily and economically as possible, the New Company shall have the right, with the approval of the Commissioner, to settle, compromise or compound
536 any claim or demand against the Old Company or its property, whether or not such claim or demand shall have been filed with the Commissioner and to pay in discharge thereof such amount as may be mutually agreed upon, and if such claim or demand shall not have been so filed, with like force and effect as if such claim or demand had been duly filed with the Commissioner and finally allowed as above set forth; provided, that no such settlement, compromise
537 or compounding shall affect the right of the New Company to contest and litigate any other claims or demands of similar character.

Withholding of Assets

21. In the event of the institution of primary receivership or other proceedings in any of the states other than the State of California, wherein the Old Company has assets and in which proceedings the assets located in any such state are liquidated and distributed exclusively to policyholders, creditors, stockholders or other persons

538 resident of said state, such policyholders, creditors, stockholders and other persons interested in assets of the Old Company, who accept in any such proceeding their pro rata share of the distribution of the assets of the Old Company located in said state, shall not be entitled to the benefits provided in this agreement.

Interpretation of Agreement and Accountings
Thereunder

22. In the event of any dispute between the
539 New Company and any person entitled to or who has elected to accept the benefits of this agreement, the determination by the Commissioner as to the interpretation of this agreement shall be conclusive and binding upon both parties to any such dispute. The accounting methods or procedure of the New Company in computing any net profits, earnings or other amounts under this agreement and the amount and character of any and all reserves which may be established by
540 the New Company under this agreement or in the course of its operations following the execution of this agreement, shall be subject to the approval of the Commissioner, and all such accounting matters and computations and amounts and characters of reserves when so approved by the Commissioner shall be conclusive and binding upon the New Company and all persons entitled to any benefit under this agreement, including, but not limited to, persons who may have elected to file their claims with the Commissioner as liquidator.

541 Commissioner Not Personally Liable

23. The Commissioner is bound by the provisions of this agreement only in his capacity as such Commissioner and as conservator or liquidator of the Old Company. All undertakings and obligations herein set forth as undertakings or obligations of the Commissioner are made by the Commissioner only in his said capacities and to such extent as he had authority to make the same, and the Commissioner makes no warranty
542 of his authority to make the same. No personal liability on the part of the Commissioner is assumed under this agreement.

Liabilities of New Company Limited by This Agreement

24. It is understood that the New Company does not assume any liability to any stockholders of the Old Company in any way arising out of or by virtue of their stock holdings in the Old Company, nor any liability of any character or
543 description to creditors of the Old Company, whether policyholder creditors or others, except as and to the extent provided in this agreement; it being specifically understood that the New Company does not assume any liability of any character or description whatsoever of the Old Company except as and to the extent in this agreement expressly provided, and the provisions of this agreement shall be a complete and adequate defense by the New Company to any action, other than an action to enforce the express provisions of this agreement, which may be brought

544 by such stockholders or creditors above mentioned.

Amendments

25. This agreement may be amended at any time while the Commissioner remains liquidator of the Old Company, by the consent of the Commissioner and the New Company, subject to the approval of the court.

Assignability of Agreement

26. This agreement and all rights, duties and 545 obligations hereunder, shall inure to the benefit of and be binding upon the respective parties hereto, their several successors and assigns.

In Witness Whereof, the New Company has caused this agreement to be executed by its president or vice president, attested by its secretary, and its corporate seal to be hereunto affixed, and the Commissioner has executed this agreement, the day and year first above written.

546

PACIFIC MUTUAL LIFE INSURANCE COMPANY,

By A. N. KEMP,

Its President

Attest: T. RUSSELL HARRIMAN, JR.,

[Seal]

Its Secretary

"New Company"

SAMUEL L. CARPENTER, JR.,

As Insurance Commissioner of the State of California and liquidator of The Pacific Mutual Life Insurance Company of California.

"Commissioner"

547

EXHIBIT C.

Deed and Bill of Sale

This Indenture, dated this 22nd day of July, 1936, by and between Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, (hereinafter called the "liquidator") not personally but as liquidator of The Pacific Mutual Life Insurance Company of California, a California corporation; party of the first part, 548 The Pacific Mutual Life Insurance Company of California, a California corporation (hereinafter called the "Old Company"), party of the second part, and Pacific Mutual Life Insurance Company, a California corporation (hereinafter called the "New Company") party of the third part,

Whereas, on or about the 22nd day of July, 1936, Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, commenced 549 a proceeding in the Superior Court of the State of California, in and for the County of Los Angeles, being entitled therein "Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, Petitioner, vs. The Pacific Mutual Life Insurance Company of California, a corporation, Respondent," being numbered No. 404673 in the files of said court, by making an application to be appointed conservator of said Old Company pursuant to Section 1011 of the Insurance Code of said state, and subsequently

550 and on said date said Samuel L. Carpenter, Jr., as Insurance Commissioner of the State of California, by order duly made in said proceeding, was duly appointed conservator of the business, assets and property of Old Company, and there was vested in said Samuel L. Carpenter, Jr., as such conservator, title to all the assets of said Old Company, wheresoever situated; and

Whereas, subsequently and on the same date, said Samuel L. Carpenter, Jr., as Insurance Commissioner of the State of California, then acting
551 as conservator of the business and assets of Old Company, made a verified application in said proceeding pursuant to Section 1016 of the Insurance Code of the State of California, to the said Superior Court, and was by said court on said date duly appointed liquidator of said Old Company and ordered and directed to liquidate and wind up the business of said Old Company, and the title to all property and assets of said Old
552 Company was continued in said Samuel L. Carpenter, Jr., as liquidator; and

Whereas, thereafter and upon the same date, said liquidator presented to said court a proposed plan and agreement of rehabilitation, sale and transfer of assets and reinsurance of the business and affairs of Old Company; which said plan and agreement was duly approved and permitted by said court by its order made and entered on said 22nd day of July, 1936, and said liquidator and

553 New Company were ordered to carry out the terms of said plan and agreement; and

Whereas, by the terms of said plan and agreement it is provided that upon the execution of that certain agreement contained in said plan by liquidator and New Company, and in consideration of such execution by said New Company, liquidator shall assign, transfer and set over to said New Company all of the assets then in his hands as liquidator, and formerly belonging to

554 Old Company, with certain exceptions more fully set forth therein; and

Whereas, the order of said court approving said plan did specifically order the liquidator to forthwith transfer and set over unto said New Company upon the execution of said agreement said assets, and did specifically order the officers, directors, agents and employees of said Old Company to execute such documents of transfer and conveyance as might be requested of them, or otherwise, and do such acts in connection therewith as might be requested of them by liquidator; and

555

Whereas, liquidator and New Company have duly executed said agreement as required by said plan and as ordered and directed by the order of said court:

Now, Therefore, This Indenture Witnesseth:

That said Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, not

556 personally but as liquidator of the business and affairs of The Pacific Mutual Life Insurance Company of California, party of the first part, for himself, and said The Pacific Mutual Life Insurance Company of California, party of the second part, for itself, in order to carry into effect said orders of said Superior Court of the State of California in and for the County of Los Angeles, and the provisions of the plan and agreement of rehabilitation, sale and transfer of
557 assets and reinsurance approved, permitted and authorized by said court, in consideration of the premises and the sum of ten dollars (\$10.00) lawful money of the United States to them paid, receipt of which is hereby acknowledged, and other good and valuable consideration, have granted, bargained, sold, aliened, remised, released, conveyed, confirmed, assigned, transferred and set over, and by these presents do grant, bargain, sell, alien, remise, release, convey, con-
558 firm, assign, transfer and set over unto Pacific Mutual Life Insurance Company, a corporation, the grantee, party of the third part, its successors and assigns, all assets and property and interests in assets and property of every kind, character and description held or owned by said Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, not personally but as liquidator of the business and affairs of The Pacific Mutual Life Insurance Company of California, and held or owned by said The Pacific

559 Mutual Life Insurance Company of California,
a corporation, vested and contingent, in law or in
equity, tangible and intangible, real, personal or
mixed, and wheresoever situate, and all assets,
interests, property of every kind, character and
description, vested and contingent, in law and in
equity, tangible and intangible, real, personal or
mixed, held or which might be held by said party
of the first part or party of the second part, and
to which either of said parties are or may be-
560 come entitled, including, without limiting the gen-
erality of the foregoing description, all real
property and interest therein, tangible and in-
tangible personal property, merchandise and sup-
plies, furniture, fixtures, equipment, cash on
hand and in bank and in transit; stocks, bonds
and other securities, choses in action, claims,
suits, causes of action, demands, set-offs and
counter-claims, notes and accounts receivable ow-
ing to Old Company and/or liquidator, together
561 with all security therefor, all collateral and
security deposits made by Old Company and/or
liquidator, and all collateral and security deposits
made by any person, firm or corporation with Old
Company and/or liquidator and held by them, or
either of them, on this date, contract rights and
interests, rights of subrogation and priority,
licenses, policies of insurance and reinsurance and
claims thereunder, prepaid insurance and other
prepaid expenses, franchises, trade names, trade-
marks, patents and copyrights, good will, the ex-

562 clusive right to the extent possessed by Old Company and/or liquidator to use the name "The Pacific Mutual Life Insurance Company of California" or "Pacific Life Insurance Company", and all books, records and papers pertaining to the business and affairs of Old Company and/or liquidator;

Saving and excepting herefrom, however, the following described property:

(1) All of the capital stock of New Company
563 now owned and held by liquidator; and (2) any and all rights or claims of whatsoever nature which the Old Company or the liquidator, in his capacity as liquidator of the Old Company, may have against any of the present or past officers, directors or employees, as such, of the Old Company, or against any other person, firm or corporation, by reason of wrongful or illegal acts or omissions of any of the past or present officers, directors or employees of the Old Company,
564 including rights or claims on any fidelity or surety bond or bonds given to or in favor of the Old Company to secure the faithful performance by any of its officers, directors or employees of any of their duties as such.

To Have and to Hold, possess and enjoy, all and singular the above mentioned real and personal property, rights, franchises, privileges and immunities thereto appertaining, hereby conveyed or intended so to be, unto Pacific Mutual Life

565 Insurance Company, a corporation, as grantee, its successors and assigns, and to its and their own proper use, benefit and behoof hereunder, free from any charge or claim other than those undertaken and assumed by New Company by reason of its agreement heretofore executed, as hereinabove described, or such other charges or claims as may be imposed upon said New Company by the order of a court of competent jurisdiction in the premises.

566 Subject, However, in so far as any of the property by this indenture conveyed, assigned or transferred is covered by the lien thereof, to the lien of taxes or assessments lawfully levied or assessed against the same, and to all other liens, legal or equitable, superior at the time of said sale to the title of said Old Company and/or said liquidator, and subject to all conditions, restrictions, reservations, easements and rights-of-way of record.

567 This conveyance is made without any warranty of title or interest whatsoever and is and shall be deemed to be a conveyance only of such right, title and interest in and to all of said property as is or shall be owned or held by said liquidator and/or said Old Company.

Liquidator shall not incur any personal liability by reason of the execution of this indenture or by reason of any recital or covenant herein contained.

568 In Witness Whereof, first party has hereunto set his hand and seal, and second and third parties have caused their corporate names to be attached by their officers thereunto duly authorized, this 22nd day of July, 1936:

SAMUEL L. CARPENTER, JR.

not personally but as liquidator of The Pacific Mutual Life Insurance Company of California,

Party of the First Part.

569

THE PACIFIC MUTUAL LIFE INSURANCE
COMPANY OF CALIFORNIA

By D. C. MacEwen

Vice President

By Elmer C. Potter

Assistant Secretary

(Old Company)

Party of the Second Part.

(Seal)

570

PACIFIC MUTUAL LIFE INSURANCE
COMPANY

By A. N. Kemp

President

By T. Russell Harriman, Jr.

Secretary

(New Company)

Party of the Third Part.

(Seal)

571 State of California County of Los Angeles ss.

On this 22nd day of July, 1936, before me, E. W. Muhsfeld, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared Samuel L. Carpenter, Jr., known to me to be the person whose name is subscribed to the foregoing Deed and Bill of Sale and acknowledged to me, that he executed the same.

572 Witness my hand and official seal.

(Seal) E. W. MUHSFELD

Notary Public in and for said County and State.

My Commission Expires June 27, 1940

State of California County of Los Angeles ss.

573 On this 22nd day of July, 1936, before me, E. W. Muhsfeld, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared D. C. MacEwen, known to me to be the Vice President, and Elmer C. Potter, known to me to be the Ass't Secretary of The Pacific Mutual Life Insurance Company of California, one of the corporations which executed the foregoing Deed and Bill of Sale, known to me to be the persons who executed said Deed and Bill of Sale on.

574 behalf of the corporation herein named, and acknowledged to me that such corporation executed the same.

Witness my hand and official seal.

(Seal)

E. W. MUHSFELD

Notary Public in and for said County and State.

My Commission Expires June 27, 1940 :

State of California County of Los Angeles ss.

575 On this 22nd day of July, 1936, before me, E. W. Muhsfeld, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared A. N. Kemp, known to me to be the President, and T. Russell Harriman, Jr., known to me to be the Secretary of Pacific Mutual Life Insurance Company, one of the corporations which executed the foregoing Deed and Bill of Sale, known to

576 me to be the persons who executed said Deed and Bill of Sale on behalf of the corporation herein named, and acknowledged to me that such corporation executed the same.

Witness my hand and official seal.

(Seal)

E. W. MUHSFELD

Notary Public in and for said County and State.

My Commission Expires June 27, 1940

577,

EXHIBIT D

REHABILITATION, SALE AND TRANSFER OF
ASSETS AND REINSURANCE AGREEMENT

Between

PACIFIC MUTUAL LIFE INSURANCE COMPANY

And

SAMUEL L. CARPENTER, JR.

As Insurance Commissioner of the State of
California and as Liquidator of

THE PACIFIC MUTUAL LIFE INSURANCE
COMPANY OF CALIFORNIA

578

Dated July 22, 1936.

As Amended July 23, 1936

Rehabilitation, Sale and Transfer of Assets and
Reinsurance Agreement.

579

This Agreement, made and entered into this
23rd day of July, 1936, between Pacific Mutual
Life Insurance Company, a California corpora-
tion, and Samuel L. Carpenter, Jr., as Insurance
Commissioner of the State of California and as
liquidator of The Pacific Mutual Life Insurance
Company of California, a California corporation,

Witnesseth:

Whereas, an order was entered in the Superior
Court of the State of California in and for the
County of Los Angeles on the 22nd day of July,
1936, in a proceeding entitled "Samuel L. Car-

580 penter, Jr., Insurance Commissioner of the State
of California, Petitioner, vs. The Pacific Mutual
Life Insurance Company of California, a corpo-
ration, Respondent," by which the court found
that The Pacific Mutual Life Insurance Company
of California was in such condition that its fur-
ther transaction of business would be hazardous
to its policyholders, creditors and to the public,
and that said Company was insolvent within the
meaning of Article 13, Chapter 1, Part 2, Divi-
581 sion 1, of the Insurance Code of the State of
California, and by which said order title to all
of the assets of said Company, wheresoever sit-
uated, was vested in Samuel L. Carpenter, Jr. in
his official capacity as Insurance Commissioner
of the State of California, and by which order
said Commissioner was directed forthwith to take
possession of all of the books, records, property,
real and personal, and assets of said Company
and to conduct as conservator the business of
582 said Company, and enjoining said Company and
its officers, directors, agents, servants and em-
ployees from the transaction of its business or
disposition of its property until the further order
of said court, and pursuant to said order said
Commissioner has become vested with the title
to and did take possession of all of the books,
records, property, real and personal, and assets
of said Company; and

Whereas, said Commissioner as conservator as
aforesaid, did thereafter apply to said court for

583 an order for the liquidation of said Company and for an order directing the Commissioner to formulate and submit a plan and agreement of rehabilitation and reinsurance which, in the judgment of the Commissioner, would best preserve the value of the estate in liquidation, provide for the removal of the causes which made the proceeding necessary, and most fairly and equitably protect the rights and claims of all persons interested therein; and

584 Whereas, said court thereafter made and entered an order for the liquidation of said Company, appointing the Commissioner as liquidator thereof, and as such vested with title to all of the assets of said Company, and directing the Commissioner to file such a plan; and

Whereas, said Commissioner submitted to said court a Rehabilitation, Sale and Transfer of Assets and Reinsurance Plan and Agreement, alleging that said plan and agreement will preserve the value of the assets in liquidation, is fair and equitable to the policyholders, creditors and stockholders of said Company, and protects the legal rights of all interested parties as they now exist; and

585

Whereas, thereafter said court made and entered an order approving said plan and agreement, and finding that said plan and agreement is fair and equitable and protects the existing legal rights of the policyholders, creditors and

586 stockholders of said Company, and directing that the Commissioner proceed to consummate said plan and execute this agreement;

Whereas, pursuant to said order last mentioned, Pacific Mutual Life Insurance Company and Samuel L. Carpenter, Jr., as Insurance Commissioner of the State of California and as liquidator of The Pacific Mutual Life Insurance Company of California, made and entered into on July 22, 1936, a Rehabilitation Sale and Transfer of Assets and Reinsurance Agreement (hereinafter referred to as the original agreement), and

587 Whereas said original agreement provided in Paragraph 25 thereof that the same might be amended at any time while the Commissioner remains liquidator of The Pacific Mutual Life Insurance Company of California, by the consent of said Commissioner and of Pacific Mutual Life Insurance Company, subject to the approval of the court, and

588 Whereas said Commissioner remains liquidator of The Pacific Mutual Life Insurance Company of California and said Commissioner did on July 23, 1936, propose that Paragraph 15 of the original agreement be amended in certain respects and filed his petition with the court for the approval of such proposed amendment and for the approval of the execution of this agreement to provide for said amendment, and

589 Whereas Pacific Mutual Life Insurance Company has consented to said proposed amendment and the court has made its order under date of July 23, 1936, approving said amendment and the execution of this agreement;

Now, Therefore, in consideration of the premises and of the respective undertakings of the parties hereto, it is hereby agreed that the above mentioned original agreement executed under date of July 22, 1936, shall be, and the same
590 hereby is, amended so that Paragraphs 1 to 26, both inclusive, of said original agreement shall read in words and figures as hereinafter set out in Paragraphs 1 to 26, both inclusive, of this agreement, to-wit:

Now, Therefore, in consideration of the premises and of the respective undertakings of the parties hereto, It Is Hereby Agreed: [D. L. E., J.]

591 Definitions

1. The parties to this agreement and the persons mentioned herein will be referred to and certain terms used herein are hereby defined as follows:

Samuel L. Carpenter, Jr., in his capacity as Insurance Commissioner of the State of California and as liquidator of The Pacific Mutual Life Insurance Company of California, and any successor Commissioner and liquidator, will be referred to as "Commissioner."

592 The Pacific Mutual Life Insurance Company of California will be referred to as the "Old Company."

Pacific Mutual Life Insurance Company will be referred to as the "New Company."

The Superior Court of the State of California in and for the County of Los Angeles will be referred to as the "Court."

593 The date and hour of entry of said order of liquidation, to wit, July 22, 1936, at one o'clock P. M. Pacific Standard Time, will be referred to as the "date of liquidation."

This agreement shall be deemed to have been executed and shall be effective as of the date and hour of entry of said order of liquidation, and said date and hour will be referred to as the "effective date of this agreement."

594 The phrase "assets of the Old Company" or any similar phrase used in this agreement shall be deemed to mean all books, records, property, real and personal, tangible and intangible, and all other assets of every kind, character and description whatsoever, and wheresoever situated, owned by the Old Company at the time of the appointment of the Commissioner as conservator which shall not have been applied by him against his subscription for stock of the New Company or disposed of by him in the due course of his administration as conservator or in his administration as liquidator of the Old Company, plus all

595 property acquired by the Commissioner in either of said capacities and the income therefrom collected by him, except (a) the stock of the New Company held by him, and (b) any and all rights or claims of whatsoever nature which the Old Company or the Commissioner, in his capacity as liquidator of the Old Company, may have against any of the present or past officers, directors or employees, as such, of the Old Company, or against any other person, firm or corporation, 596 by reason of wrongful or illegal acts or omissions of any of the past or present officers, directors or employees of the Old Company, including rights or claims on any fidelity or surety bond or bonds given to or in favor of the Old Company to secure the faithful performance by any of its officers, directors or employees of any of their duties as such.

Outstanding policies of the Old Company known as its Non-Cancelable Income Policies, 597 including the Aggregate form thereof, will be referred to as "Non-Can Policies."

Transfer of Assets

2. The Commissioner shall grant, bargain, sell, assign, convey, transfer, set over and deliver to the New Company the assets of the Old Company.

The Commissioner shall not be required to make manual delivery of any cash or securities deposited by the Old Company with any govern-

598 mental authority as a condition to the conduct of its business, but shall only be required to assign his interest therein, subject to the terms of such deposit.

The Commissioner shall transfer and deliver to the New Company the full amount of all premiums paid to the Commissioner on any policy reinsured and assumed hereunder which have been paid in to the Commissioner on or after the date of liquidation, and the New Company
599 shall credit the holder of such policy with the payment of such premiums accordingly, subject to repayment as hereinafter provided in the event the holder of such policy shall elect not to accept such reinsurance and assumption by the New Company. The New Company shall repay to the Commissioner upon demand any premium received by the New Company hereunder from the Commissioner which was paid by or on behalf of the insured after the date of liquidation
600 to the Commissioner, if the policyholder has filed or shall file a claim in accordance with the Commissioner's notice requiring the filing of claims in the above mentioned cause, and the court shall direct the Commissioner to return the premium so paid,

Subsequent to the effective date of this agreement and for such period of time as the Commissioner may determine, no investment or reinvestment of the assets of the Old Company trans-

601 ferred to the New Company pursuant to this
agreement shall be made without first obtaining
the written approval of the Commissioner. The
Commissioner hereby agrees that said period
shall in no event exceed six months from and
after the effective date of this agreement.

Reinsurance and Assumption of Policies Other Than Non-Can Policies

602 3. The New Company does hereby reinsure
and assume, as of the date of liquidation, with
the exception hereinafter provided, the liability
of the Old Company under all life, endowment
annuity and term policies and contracts of insur-
ance, and all other policies and contracts of
insurance, including, without limiting the same
to, health and accident benefits, waiver of pre-
mium disability benefits, permanent and total
disability benefits, and all supplementary con-
tracts, annuity contracts and all reinsurance con-
603 tracts, issued or assumed by the Old Company
and outstanding and in force on the books and
records of the Old Company at the date of liqui-
dation, subject, however, to any and all defenses,
offsets, counterclaims, cross-complaints and re-
scission rights against said policies or contracts
or against any claims and actions thereon, which
would have been available to the Old Company
had this agreement not been made: provided,
however, that all outstanding Non-Can Policies
are not reinsured or assumed under this para-

604 graph and are hereby expressly excepted from the obligations of the New Company under this paragraph. The determination by the New Company as to the validity of any policy claim on policies reinsured and assumed under this paragraph and the payment thereof shall be binding upon all persons so reinsured hereunder.

Reinstatement of Lapsed Policies

605 4. The New Company will reinstate any policies heretofore issued, assumed or reinsured by the Old Company, which are not excepted from the obligations of the New Company contained in the foregoing paragraph and which at the date of liquidation, by their terms, were entitled to reinstatement, provided that all requirements necessary to procure a reinstatement of said policies under their terms are fulfilled to the satisfaction of the New Company.

606 The New Company will also reinstate, during the lifetime of the insured and provided the insured is not in such condition as to be eligible for benefits under the policy, without evidence of insurability, any of said policies, with the aforesaid exception, which have lapsed since the date of liquidation, upon written application therefor by the insured and the payment of all premiums in arrears, if such application is made and premiums are paid within sixty (60) days after the effective date of this agreement. Upon the reinstatement of such lapsed policy it shall,

607 for all purposes, be treated the same as if it had
been in force on the date of liquidation and be
subject to the terms and conditions of this agree-
ment.

Payment of Policy Claims Other Than Claims
on Non-Can Policies

5. The New Company will pay in full, in
accordance with the terms and conditions of the
policies or other contracts under which the claims
608 shall have been or may be made, and whether
or not the claims arose or matured prior or sub-
sequent to the date of liquidation, all claims
(except claims on Non-Can Policies) including,
without limiting the same to, claims for death
benefits, matured endowments, annuity payments,
permanent total disability and premium waiver
benefits, accident and sickness benefits, payments
under policy settlement agreements, policy divi-
dends left at interest with the Old Company
609 prior to the date of liquidation, and payments
under all other matured contracts under which
the proceeds of policies and contracts were left
with the Old Company prior to the date of liqui-
dation; subject, however, to any and all defenses,
offsets, counter-claims, cross-complaints and re-
scission rights against any such claim or claims
which would have been available to the Old
Company had this agreement not been made.

610 Reinsurance and Assumption of Non-Can
Policies

6. The New Company does hereby reinsure and assume, as of the date of liquidation, the liability of the Old Company under all Non-Can Policies issued by the Old Company and outstanding and in force on the books and records of the Old Company at the date of liquidation, subject, however, to the terms, conditions and limitations, and only to the extent hereinafter
- 611** specifically provided and subject, further, to any and all defenses, offsets, counterclaims, cross-complaints, and rescission rights against such policies or any claims and actions thereon which would have been available to the Old Company had this agreement not been made. The determination by the New Company as to the validity of any policy claim on policies reinsured and assumed under this paragraph and the payment thereof shall be binding upon all persons so
- 612** reinsured hereunder.

Terms, Conditions, Limitations and Extent of
Reinsurance and Assumption of Non-Can
Policies

7. The obligation of the New Company with respect to the payment of monthly disability benefits on claims either filed or notice of which is filed with the New Company or any of its predecessors at any time after the date of liquidation under Non-Can Policies reinsured and

613 assumed under the preceding paragraph, subject to restoration as provided in paragraph 8 hereof, shall be limited to payment of the following percentages of the monthly disability benefits originally provided, under said policies, according to the following premium classes, respectively:

	Percentage of Original Monthly Benefit Assumed By New Company	
614 Premium Class of Policy		
1918 Premium class		
Issued under Rate Books:		
A 1445, A 1445 Z, A 1445Y, A 1445 X and A 1445 W.	20%	
in period from:		
August, 1918—September, 1921		
1921 Premium class		
Issued under Rate Books:		
615 A 1687, A 1687 Z, A 1687 Y, A 1687 X, A 1687 W.	35%	
in period from:		
September, 1921—July, 1926.		
1926 Premium class		
Issued under Rate Books:		
A 1958, A 1958 Z, A 1958 Y,	45%	
in period from:		
July 1926—February, 1929.		

616 1929 Premium class

Issued under Rate Books:

A 2293

55%

in period from:

February, 1929—January, 1931.

1931 Premium class

Issued under Rate Book:

A 2367

65%

in period from:

January, 1931—March, 1932.

617

1932 Premium class

Issued under Rate Books:

A 2432, A 2432 Z, A 2499

90%

in period from:

March, 1932—February, 1935.

Aggregate policy

Issued under Rate Books:

A 2499, A 2567

90%

618

in period from:

October, 1933—July, 1935.

Note: All of the above mentioned Rate Books are Rate Books issued by the Old Company and copies are on file at the office of the New Company at 523 West Sixth Street, Los Angeles, California, and in the offices of the Insurance Commissioners or similar public officials of each state in which the Old Company has been transacting insurance business.

Notwithstanding the foregoing limitation on the obligation of the New Company to make

619 monthly disability payments on such policies, there shall be no change or reduction in the original premium rates on such policies, and to be entitled to the reinsurance and assumption of his Non-Can Policy by the New Company as aforesaid, the policyholder shall be obligated to continue to make premium payments at the rate originally provided in his policy.

Restoration of Non-Can Benefits

620 8. The New Company shall be obligated to restore the monthly disability benefits, originally provided in the Non-Can Policies reinsured and assumed under this agreement by applying, and only by applying, to such extent and in such manner and at such time or times as may be proposed by the New Company and approved by the Insurance Commissioner of the State of California as hereinafter provided, sums equivalent to the following:

621 (a) The net profits derived by the New Company from that portion of the business of its accident and health department represented by accident and health policies reinsured and assumed under this agreement, including all Non-Can Policies so reinsured and assumed hereunder; and

(b) The net profits derived by the New Company from that portion of the business of the nonparticipating branch of its life department represented by nonparticipating life insurance policies reinsured and assumed hereunder.

- 622 As of December 31, 1938, and tri-annually thereafter or at the time of the regular examination of the New Company by the Insurance Commissioner of the State of California, the New Company shall render to such Commissioner an accounting of the net profits, if any, arising from the sources referred to in (a) and (b) above, including the New Company's proposal as to the extent and manner of the application of sums equivalent to such net profits to
- 623 the restoration of benefits on said Non-Can Policies. Any such proposal may include provision for proportionate restoration of commissions to agents, who through accepting the assumption of their contracts on the basis hereinafter provided, have received less commissions on such policies than they otherwise would have received. After the approval of any such proposal by said Commissioner with such changes as he may require therein, the New Company
- 624 shall proceed to put said proposal into effect. The extent and manner of the restoration, as provided in any such proposal so approved by said Commissioner, shall be binding upon all holders of said Non-Can Policies and other persons interested therein.

The holders of any such Non-Can Policies surrendered to the New Company in connection with any settlement thereunder shall not be entitled thereafter to any of the benefits of such restoration.

625 The holders of any such Non-Can Policies which shall have lapsed after the date of liquidation and which shall not have been reinstated either in accordance with their terms or in accordance with the provisions of this agreement, shall not be entitled thereafter to any of the benefits of such restoration.

Reinstatement of Lapsed Non-Can Policies

9. The provisions of paragraph 4 of this agreement with respect to reinstatement of
626 lapsed policies shall apply to Non-Can Policies, subject to the terms, conditions and limitations contained in paragraphs 6 and 7 hereof.

Payment of Claims on Non-Can Policies Filed
Prior to Date of Liquidation

10. The New Company shall be obligated to continue the payment of all disability benefits under Non-Can Policies, claims or notices of claims for which had been filed with the Old Company, prior to the date of liquidation, and
627 all payments under settlement agreements made by the Old Company with claimants under such policies, without any deduction or limitation whatsoever, but subject to all of the terms and provisions of such Non-Can Policies, and subject to any such settlement agreements; and subject, further, to any and all defenses, offsets, counter-claims, cross-complaints, and rescission rights against any such claim or claims, which would have been available to the Old Company had this agreement not been made.

628

Moratorium.

11. The reinsurance and assumption of obligations by the New Company herein provided for are subject to the condition that the new Company shall not be required, prior to sixty (60) days, and such additional period as may be determined by the Commissioner, from and after the effective date of this agreement, to make policy loans (except for the purpose of paying premiums on the same policy or on additional policies issued on the same life), or to pay cash surrender values. This provision, however, shall not apply to any increase in values that are accumulated from premium payments or loan repayments which are received subsequent to the date of liquidation.

629

During such period as the moratorium is in effect the cash surrender option of all policies of the Old Company may be considered as non-existing, except as provided above, and all policyholders who do not pay their premiums and who are entitled to a guaranteed value will be restricted to the automatic nonforfeiture value (properly adjusted for any policy indebtedness and accrued interest thereon) under the policy. At the discretion of the New Company, however, the cash surrender value under any policy, properly adjusted for any policy indebtedness and accrued interest thereon, may be allowed whenever it appears, in the sole judgment of the New Company, that the granting of such sur-

630

631 render value will be to the advantage and benefit of the Old Company policyholders as a class.

Assumption of Claims Against Old Company

12. The New Company hereby assumes and agrees to pay the following:

(a) All costs and expenses of the Commissioner in his capacities as conservator or liquidator of the Old Company, including attorneys' fees, as finally approved by the court;

632 (b) All unpaid taxes legally due the United States, the State of California, and other States, and Counties and Municipalities thereof, in connection with the business and assets of the Old Company, and remaining unpaid;

(c) Wages and salaries legally due to persons employed by the Old Company for services rendered and current bills for office supplies and incidental expenses in connection with the operation of the business of the Old Company and remaining unpaid;

633 (d) All claims against the Old Company filed with the Commissioner as liquidator, and finally allowed by the Commissioner and/or by the Court.

The obligation of the New Company with respect to items (a), (b), (c) and (d) above shall be to pay the same, in the order of preference established by law, and shall be limited, in the aggregate, to an amount equal to the value of the assets of the Old Company transferred to the

634 New Company pursuant to this agreement, on the basis of valuation provided in paragraph 13 of this agreement, less the amount of the reserves established by the New Company, with the approval or in accordance with the requirements of the Commissioner, with respect to policies of the Old Company reinsured and assumed by the New Company hereunder, and with respect to policy claims assumed by the New Company hereunder.

635 Valuation of Assets Transferred to New Company:

13. The assets of the Old Company transferred to the New Company pursuant to this agreement shall be valued at the amounts established therefor in the so-called "Convention Report" made in 1936 by the Commissioner and similar officials of certain other states in which the Old Company did business, with respect to the condition of the Old Company, as of December 31, 1935.

Agents

14. The New Company hereby assumes, subject to the limitation and exception hereinafter stated, any obligations under any contract heretofore made by the Old Company with any agent (regardless of classification), manager, or supervisor, it being recognized that the services of [D.L.E., J.] whose the agents who produced, or under his direction

637 or supervision was produced, the business reinsured or assumed hereunder in servicing said business, and the maintaining of same in force is to the ultimate interest and advantage of the policyholders of the Old Company. However, the obligations of the Old Company to pay commissions on Non-Can Policies reinsured and assumed by the New Company with the limitations as to disability benefits hereinbefore provided, shall be reduced as follows: (a) No commissions due after the date of liquidation shall be
638 paid on Non-Can Policies on all forms issued prior to and including Forms A291 to A294, both inclusive, and (b) [D.L.E., J.] commissions due after the date of liquidation on all Non-Can Policies issued on all other forms, the holders of which accept ~~and reinsure~~ the reinsurance and assumption of [D.L.E., J.] their ~~assumption~~ policies [D.L.E., J.] by the New Company on the reduced basis hereinbefore provided, shall be
639 reduced in proportion to the reduction in disability benefits to the insured under such policies. The New Company shall not assume or be bound by any agreement which the Old Company may have made with agents with respect to payment of commissions on policies after lapsation. To such extent, in such manner and at such time or times as may be proposed by the New Company and approved by the Insurance Commissioner of the State of California, as provided in paragraph 8 of this agreement, the New

- 640 Company shall apply its net profits derived from the sources referred to in (a) and (b) of said paragraph 8 to the restoration to agents of the amounts of the reduction in their commissions on policies referred to in (b) of this paragraph to which said agents would have otherwise been entitled.

Additional Payments on Allowed Claims and
Payments to Stockholders of Old Company

15. For a period of ten (10) years com-
641 mencing January 1, 1937, the New Company shall pay to the Commissioner for the benefit of holders of claims filed with the Commissioner and finally allowed by him or by the court, until such claims shall have been paid in full, and thereafter for the benefit of and distribution to the stockholders of the Old Company, the net profits of the New Company derived from the sources referred to in (a) and (b) of paragraph 8 of this agreement remaining after:

- 642 (a) The holders of Non-Can Policies referred to in said paragraph 8 shall have been restored to the full benefits originally stated in their policies as provided in said paragraph; and
(b) The New Company shall have established such reserves as may be deemed necessary by the New Company and the Commissioner for proper depreciation of the assets allocated to, or held by, the New Company for the benefit of the departments referred to in (a) and (b) of said paragraph 8; and

643 (c) Restoring to surplus allocated to the participating life department of the New Company the sum of \$1,792,118.97, or its equivalent, together with interest thereon to date of restoration at the average rate earned by the New Company during such period on its invested assets; and

(d) Creating a reserve or adding to the surplus of the New Company an amount equal to the amount of policy reserve for Non-Can Policies released by reason of lapsation of such policies reinsured and assumed hereunder in excess of a lapse rate of ten per cent (10%) per year, or occasioned by substitutions or exchanges of such policies for other types of accident or health insurance.

At the end of said ten (10) year period, to-wit, on January 1, 1947, the New Company shall either (1) create a fund equal to \$10 per \$1000 of nonparticipating life insurance reinsured and 645 assumed by the New Company under this agreement and then remaining in force, or; (2) until said fund shall be so created, pay an amount equal to interest at the rate of six per cent (6%) per annum on an amount equal to said fund computed as aforesaid, which fund, and, until the creation thereof, said interest payments, shall be applied, first, to the extent necessary to complete the restoration and establishment of reserves referred to in (a), (b), (c) and (d) above, and, second, to the payment to the Com-

646 missioner to the extent necessary to pay any unpaid balance of claims filed with the Commissioner and finally allowed, and thereafter to distribution pro rata to the stockholders of the Old Company.

Any such payments to stockholders of the Old Company, in accordance with the foregoing, shall either be made pro rata to such stockholders, as their interests may appear according
647 to the stock ledgers of the Old Company, or the New Company may issue to the Commissioner or to such stockholders appropriate certificates of the New Company evidencing its obligation to make such payments. Such certificates of interest may either be issued by the New Company to the Commissioner for distribution by him to stockholders of the Old Company in exchange for their stock certificates, or, at the election of the New Company, may be issued by the
648 New Company directly to such stockholders upon the surrender of their stock certificates.

Mutualization of New Company

16. The New Company hereby consents to such plan for its voluntary mutualization in accordance with the laws of the State of California as now in effect or hereafter amended, as may be proposed by the Commissioner, as soon as

649 legally possible; and the Commissioner agrees to propose such mutualization plan, as the holder of the stock of the New Company. Such mutualization plan shall contain such terms and provisions, not inconsistent with this agreement, as may be required by law or approved by the Commissioner and the New Company. The purchase price paid by the New Company for the acquisition of its outstanding stock pursuant to such
650 mutualization plan to the extent not required by the Commissioner as the holder of said stock for the satisfaction of claims against the Old Company, filed with the Commissioner and finally allowed, shall be repaid by the Commissioner to the New Company.

Notice.

17. The New Company shall mail promptly to the insured named in all policies and supplementary contracts of the Old Company in force
651 at the date of liquidation, and any assignees thereof of record, a printed copy of the Rehabilitation, Sale and Transfer of Assets and Reinsurance Plan concerning the Old Company, including a copy of this agreement as executed, to which the New Company may attach its certificate of reinsurance and assumption, inserted in an envelope, first class postage prepaid, ad-

652 dressed to the name and address of each of the persons aforesaid last shown upon the records of the Old Company. By "assignees of record" is meant assignees appearing upon the records of the Old Company at its Home Office.

Election of Policyholders and Claimants and
Effect Thereof

18. Each policyholder and policy claimant of the Old Company may elect either to accept the
653 reinsurance and assumption of his policy or contract and/or any claim thereunder by the New Company, as provided in this agreement, or to file his claim against the Old Company with the Commissioner, in the manner provided by the Insurance Code of the State of California with respect to the filing of claims against an insurer in the process of liquidation. Persons so filing claims, who shall not withdraw them as herein
654 after provided, are herein referred to as dissenting policyholders. The filing of a claim by any dissenting policyholder shall remove the policy or contract in respect of which said claim shall be filed, and the claim of persons under such policy or contract from the benefit of the provisions of this agreement with respect to reinsurance and/or assumption, and shall constitute an irrevocable election, on the part of such policy

655 or contract holder, and his beneficiary and all persons claiming under him, not to accept the benefit of such reinsurance and/or assumption provisions unless such claim shall be withdrawn by the claimant at any time prior to the expiration of sixty (60) days from and after the date of the expiration of the time for filing claims, as provided by law, with the written consent of the New Company, in which event such policy or
656 contract, and the persons interested in the benefits thereunder, shall be entitled to the benefit of such reinsurance and/or assumption provisions and shall be bound by this agreement.

Every person entitled to accept any benefit under this agreement, who shall have indicated his election so to do either by not filing any such claim, or by withdrawing such claim if filed, shall be considered as assigning to the New
657 Company all his claims against the Old Company, and the benefits of any rights, securities, liens, or preferences to which he may be entitled by reason of his claims and also as so assigning all interest to which his claims may entitle him in all of the assets of the Old Company, whether located in California or elsewhere. The New Company shall be entitled to assert and prosecute its claims, securities, liens or preferences of all

658 holders of policies or contracts, issued or assumed by the Old Company, who so assent to or become bound by the provisions of this agreement, and the New Company shall be entitled to assert and obtain in such manner as it may deem best, any rights, securities, liens, or preferences to which the holders of policies or contracts issued or assumed by the Old Company, who shall so assent to or become bound by the provisions
659 of this agreement, would have had.

Each holder of any policy or contract issued or assumed by the Old Company, who shall not have filed his claim against the Old Company with the Commissioner in the manner and within the period required by law, shall be deemed ipso facto to have assented to and become bound by the provisions of this agreement, and entitled to the benefits hereof, subject to all of its terms.

660 No holder of any such policy or contract of the Old Company who shall be deemed to have assented to or become bound by the provisions of this agreement shall have any rights, securities, liens, or preferences not accorded by this agreement.

661 Right of the New Company to Prosecute and
Defend Claims

19. All claims or demands against the Old Company or its property now the subject of litigation in any court of competent jurisdiction in actions against the Old Company, and any and all claims and demands against the Old Company or its property filed with the Commissioner as liquidator, may be prosecuted and defended 662 until final judgment, and the New Company shall have the right to assist and join in such defense through counsel selected and paid by the New Company, and with all defenses, offsets, counter-claims, cross-complaints and rescission rights that might or could have been available to it, the Old Company, or to the Commissioner as liquidator, including all rights of appeal or review in whatsoever form.

663 Right of New Company to Settle or Pay Claims
Against Old Company

20. In order that claims against the Old Company may be disposed of as speedily and economically as possible, the New Company shall have the right, with the approval of the Commissioner, to settle, compromise or compound any claim or demand against the Old Company or its property, whether or not such claim or demand shall have been filed with the Commis-

664 sioner and to pay in discharge thereof such amount as may be mutually agreed upon, and if such claim or demand shall not have been so filed, with like force and effect as if such claim or demand had been duly filed with the Commissioner and finally allowed as above set forth; provided, that no such settlement, compromise or compounding shall affect the right of the New Company to contest and litigate any other claims or demands of similar character.

665

Withholding of Assets

21. In the event of the institution of primary receivership or other proceedings in any of the states other than the State of California, wherein the Old Company has had [D.L.E., J.] assets and in which proceedings the assets located in any such state are liquidated and distributed exclusively to policyholders, creditors, stockholders or other persons resident of said state, such policyholders, creditors, stockholders
666 and other persons interested in assets of the Old Company, who accept in any such proceeding their pro rata share of the distribution of the assets of the Old Company located in said state, shall not be entitled to the benefits provided in this agreement:

Interpretation of Agreement and Accountings Thereunder

22. In the event of any dispute between the New Company and any person entitled to or who

667 has elected to accept the benefits of this agree-
ment, the determination by the Commissioner as
to the interpretation of this agreement shall be
conclusive and binding upon both parties to any
such dispute. The accounting methods or pro-
cedure of the New Company in computing any
net profits, earnings or other amounts under this
agreement and the amount and character of any
and all reserves which may be established by the
New Company under this agreement or in the
668 course of its operations following the execution
of this agreement, shall be subject to the ap-
proval of the Commissioner, and all such ac-
counting matters and computations and amounts
and characters of reserves when so approved by
the Commissioner shall be conclusive and bind-
ing upon the New Company and all persons en-
titled to any benefit under this agreement, in-
cluding, but not limited to, persons who may
have elected to file their claims with the Com-
missioner as liquidator.

669

Commissioner Not Personally Liable

23. The Commissioner is bound by the provi-
sions of this agreement only in his capacity as
such Commissioner and as conservator or liqui-
dator of the Old Company. All undertakings
and obligations herein set forth as undertakings
or obligations of the Commissioner are made by
the Commissioner only in his said capacities and
to such extent as he had authority to make the
same, and the Commissioner makes no warranty

670 of his authority to make the same. No personal liability on the part of the Commissioner is assumed under this agreement.

Liabilities of New Company Limited by This Agreement.

24. It is understood that the New Company does not assume any liability to any stockholders of the Old Company in any way arising out of or by virtue of their stock holdings in the Old Company, nor any liability of any character or
671 description to creditors of the Old Company, whether policyholder creditors or others, except as and to the extent provided in this agreement; it being specifically understood that the New Company does not assume any liability of any character or description whatsoever of the Old Company except as and to the extent in this agreement expressly provided, and the provisions of this agreement shall be a complete and adequate defense by the New Company to any
672 action, other than an action to enforce the express provisions of this agreement, which may be brought by such stockholders or creditors above mentioned.

Amendments

25. This agreement may be amended at any time while the Commissioner remains liquidator of the Old Company, by the consent of the Commissioner and the New Company, subject to the approval of the court.

673

Assignability of Agreement

26. This agreement and all rights, duties and obligations hereunder, shall inure to the benefit of and be binding upon the respective parties hereto, their several successors and assigns.

The original agreement, as hereby amended, is ratified, confirmed, approved and continued in full force and effect.

674

In Witness Whereof, the New Company has caused this agreement to be executed by its president or vice president, attested by its secretary, and its corporate seal to be hereunto affixed, and the Commissioner has executed this agreement, the day and year first above written.

PACIFIC MUTUAL LIFE INSURANCE
COMPANY,

By Asa V. Call

Its Vice President

Attest: T. Russell Harriman Jr.

Its Secretary

675

"New Company"

Samuel L. Carpenter Jr.

As Insurance Commissioner of the State of California and liquidator of The Pacific Mutual Life Insurance Company of California.

"Commissioner"

Endorsed: Filed Jul. 23, 1936. L. E. Lamp-ton, county clerk; by M. E. Howard, deputy.

676 [TITLE OF COURT AND CAUSE.]

**Order Permitting Intervention and Order to
Show Cause.**

Upon reading and considering the verified petition for intervention and for order to show cause of Pacific Mutual Life Insurance Company, and good cause appearing therefor;

It is hereby ordered, adjudged and decreed:

1. That said Pacific Mutual Life Insurance
677 Company be and it hereby is granted leave to intervene as a plaintiff in the above entitled proceeding; and said petition of said Pacific Mutual Life Insurance Company be and it hereby is ordered filed as a petition in intervention.

2. That all stockholders, policyholders and creditors of The Pacific Mutual Life Insurance Company of California, and all persons interested in its business and assets, and all persons to whom it is proposed to issue securities, pursuant
678 to the plan and agreement hereinafter mentioned, shall have the right to appear, and are

Honorable Goodwin J. Knight, a judge of hereby ordered to appear, at a hearing before ^ this court, at its court room in Department 38 thereof, on August 12, 1936, at the hour of 10 o'clock A. M., then and there to show cause, if any they have, why this court should not make its order (a) confirming and approving, and ratifying the permission given with respect to, that certain plan and agreement of rehabilitation, sale

679 and transfer of assets and reinsurance of The Pacific Mutual Life Insurance Company of California, a copy of which is attached to said petition as Exhibit A, and the carrying out of the terms and provisions thereof; (b) confirming and approving the action of Samuel L. Carpenter, Jr., as Insurance Commissioner of the State of California, and as liquidator of The Pacific Mutual Life Insurance Company of California, and the action of Pacific Mutual Life Insurance Com-
680 pany in making, executing and carrying out that certain agreement provided for in said plan and agreement, a copy of which agreement as executed is attached to said petition as Exhibit B, and that certain amended agreement a copy of which is attached to said petition as Exhibit D; (c) confirming and approving the execution and delivery of the deed and bill of sale attached to said petition as Exhibit C and the action of said Samuel L. Carpenter, Jr., as Insurance Commis-
681 sioner of the State of California, and as liquidator of said The Pacific Mutual Life Insurance Company of California, in transferring and setting over to said Pacific Mutual Life Insurance Company all of the assets of said The Pacific Mutual Life Insurance Company of California the title to which was vested in him as liquidator, except the stock of said Pacific Mutual Life Insurance Company and also any and all rights or claims of whatsoever nature which respondent corporation or the liquidator, in his capacity as

682 liquidator of respondent corporation, may have against any of the present or past officers, directors or employees, as such, of respondent corporation, or against any other person, firm or corporation, by reason of wrongful or illegal acts or omissions of any of the past or present officers, directors, or employees of respondent corporation including rights or claims on any fidelity or surety bond or bonds given to or in favor of

683 respondent corporation to secure the faithful performance by any of its officers, directors or employees of any of their duties as such, and (d) approving the terms and conditions upon which it is proposed, pursuant to said plan and agreement and said amended agreement, to issue and exchange securities after a hearing at said time upon the fairness of such terms and conditions.

3. That it is, and the court hereby finds and

684 declares it to be impracticable and impossible for personal service to be made upon all interested parties of this said order to show cause. The matters herein involved are of common interest to a very large number of persons, many thousand in number. The interests of these persons can be fully protected by giving actual and personal notice to certain members of each group, as representatives of all of the group to which

685 they belong. It is both physically and practically impossible to give actual notice to all members of the group or any large percentage thereof.

Therefore, it is ordered that Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, shall select and choose six persons from each of the following groups of interested parties to act as representatives of all of said group, and shall cause to be personally served on 686 each of such persons so chosen by him, (a) a copy of this order to show cause, (b) a copy of the rehabilitation, sale and transfer of assets and reinsurance plan and agreement concerning The Pacific Mutual Life Insurance Company of California in the form proposed July 22, 1936, provided, however, that in lieu of the form of rehabilitation, sale and transfer of assets and reinsurance agreement attached thereto there shall 687 be attached a copy of the amended rehabilitation, sale and transfer of assets and reinsurance agreement dated July 23, 1936, and (c) a copy of the order entered herein July 22, 1936, titled "Order permitting, approving and authorizing Rehabilitation, Sale and Transfer of Assets and Reinsurance Plan and Agreement of The Pacific Mutual Life Insurance Company of California," such copies to be served at least ten days prior to the time set for said hearing, viz.:

688 Six persons holding non-cancellable income policies from each of the seven premium classes of such policies whose monthly disability benefits are being reduced in the plan and agreement of rehabilitation, sale and transfer of assets and reinsurance;

Six persons holding non-participating life insurance policies;

Six persons holding participating life insurance
689 policies;

Six persons holding annuity contracts;

Six persons holding accident and health policies, other than non-cancellable income policies;

All of the types of policies and contracts hereinbefore described shall be policies and contracts heretofore issued by The Pacific Mutual Life Insurance Company of California; also

690 Six persons being record owners of capital stock of said The Pacific Mutual Life Insurance Company of California; and none of whom shall be persons who were directors of said corporation on July 22, 1936; and

Six persons who are general creditors of said The Pacific Mutual Life Insurance Company of California, other than upon policies of life insurance or contracts of annuities hereinbefore referred to.

691 4. That further notice of the hearing upon
this order to show cause shall be given by the
mailing of a copy of the three documents re-
ferred to in (a), (b) & (c) of paragraph 3
hereof, by registered United States mail, postage
prepaid, at least fifteen days prior to the date of
said hearing, addressed to each of the commis-
sioners of insurance, or other heads of state in-
surance control boards, in each of the states in
692 which said The Pacific Mutual Life Insurance
Company of California was qualified to do an
insurance business, to wit, as shall be determined
by said Samuel L. Carpenter, Jr., Insurance
Commissioner of the State of California.

5. That further notice of the hearing upon
this said order to show cause shall be given by
the publication of this said order, for at least ten
consecutive days, beginning not less than fifteen
693 days prior to the date of said hearing, in the
following newspapers of general circulation:

The Los Angeles Times, The Los Angeles Ex-
aminer, The Los Angeles Evening Herald-
Express, The Illustrated Daily News, and The
Evening News, all published at Los Angeles,
California, and the San Francisco Chronicle,
published at San Francisco.

694 and also by posting a copy of this said order at three public places in the city of Los Angeles, to wit:

The Justicia street entrance of the Hall of Justice;

The Broadway entrance of the Hall of Records;

695 The Main street entrance of the City Hall; and in three public places in the city of San Francisco, to wit:

~~The main entrance of the State Building.~~

696 In a conspicuous place in each of the following buildings: The State Building, the City Hall and the United States Postoffice and the court hereby finds and declares that the foregoing times and methods of notice to the foregoing persons constitute a reasonable, practical and sufficient notice to all policyholders, creditors and stockholders of The Pacific Mutual Life Insurance Company of California and all other persons interested in its business and affairs and in this proceeding.

Dated his 23 day of July, 1936.

DOUGLAS L. EDMONDS,

Judge.

Endorsed: Filed Jul. 23, 1936. L. E. Lampson, county clerk; by M. E. Howard, deputy.

697 In the Superior Court of the state of California, in and for the county of Los Angeles.

Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, petitioner, vs. The Pacific Mutual Life Insurance Company of California, a corporation, respondent. No. 404-673.

698 **Complaint in Intervention to Set Aside Order of Liquidation, to Set Aside Order Permitting, Approving and Authorizing Rehabilitation, Sale and Transfer of Assets and Reinsurance Plan and Agreement of the Pacific Mutual Life Insurance Company of California, and to Strike From the Files of the Court the Complaint in Intervention of the Pacific Mutual Life Insurance Company and to Vacate the Order to Show Cause Granted Thereunder.**

Comes now George I. Cochrane, W. H. Davis, 699 Douglas E. C. Moore, Stanley M. McClung and for their petition in intervention they allege:

I.

Your interveners are all stockholders in The Pacific Mutual Life Insurance Company of California now and prior to July 22, 1936, owning approximately ten per centum of the issued and outstanding capital stock of said corporation, and all except said McClung were and are also duly elected, qualified and acting directors of said corporation.

II.

700

That on or about the 22nd day of July, 1936, at a directors meeting of said corporation, Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, appeared accompanied by a deputy attorney general of the state of California. That at said time said Car-

701

penter stated to the board of directors that he intended to declare the corporation insolvent and that he proposed to take over the possession and custody of the property of said corporation, and thereupon he exhibited several printed documents which he stated he intended to file in the above entitled court to accomplish that object and purpose; and he further stated that he had conceived a plan for the rehabilitation of said corporation, all of which matters were contained in the aforesaid printed documents. None of the interveners

702

aforesaid who were directors of said corporation and who were present at said meeting had any prior knowledge of the fact that said Commissioner was about to declare the corporation insolvent and take over its property and assume charge of it, nor did said persons have any knowledge of the fact that all of the aforesaid documents had been in the course of preparation for weeks. That said documents had been prepared under the supervision of said Commissioner with the assistance of certain of the directors and officers of the corporation who had not before disclosed to the majority of the directors of said

703 corporation or to any of the interveners that it
was the intention that the corporation be de-
clared insolvent, nor that they were assisting the
Commissioner in the accomplishment of such a
purpose. The interveners hereby make reference
to and adopt in this complaint the various docu-
ments on file in this action and hereby allege that
all of said documents were prepared long prior to
said meeting of the board of directors and en-
tirely without the knowledge of the aforesaid
704 interveners, said documents being, application for
order appointing conservator, order appointing
conservator and restraining order, application for
order to liquidate, order of liquidation, petition
for order permitting, approving and authorizing
rehabilitation, sale and transfer of assets and
reinsurance plan and agreement of the Pacific
Mutual Life Insurance Company of California,
and order permitting, approving and authorizing
rehabilitation, sale and transfer of assets and
705 reinsurance plan and agreement of The Pacific
Mutual Life Insurance Company of California,
also the various printed forms of rehabilitation
and amended rehabilitation agreements.

III.

That at the time of said meeting and prior
thereto intervener George I. Cochran, then chair-
man of the board of directors of said company,
had been negotiating for some time with one of
the largest insurance companies on the Pacific
Coast to the end that a condition in the Pacific

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706 Mutual Company which was created by contingent liability on non-cancellable policies might be corrected. At the time of said directors meeting, said George I. Cochran had in his possession a detailed and formal proposal by said other corporation, which proposal interveners believe would have had the effect of correcting and remedying the situation referred to. After said Commissioner had concluded his remarks to the effect that the company was immediately to be
707 declared insolvent and would be put into liquidation, said George I. Cochran, as chairman of the board of directors, stated to said Commissioner and the board of directors that he was in possession of the proposal above referred to and asked for its consideration. The board of directors were told by said Commissioner that said proposal was unsatisfactory and would not be considered in any way by him, nor would further negotiations concerning the proposal be permitted
708 nor would any time be given for consideration of any such project. At that time intervener W. H. Davis, a director, stated that the action of the Commissioner might have such disastrous results to the welfare of the corporation that it would be proper for the matter to be considered for at least twenty-four hours so that all of the directors and other persons interested would have an opportunity to advance proposals to correct the aforesaid situation and said Davis moved that the board of directors meeting be adjourned

709 for twenty-four hours to permit time for the consideration of such matters. In answer to said request said Commissioner and the deputy attorney general present told the said W. H. Davis and the other directors that any attempt by them to take any action with respect to the affairs of the company might subject any such person to a felony charge. Thereupon said George I. Cochran, as chairman of the board of directors, stated to said Carpenter and the board of directors that
710 he could not see that under such conditions the directors had any recourse other than to acquiesce in the plan of the Commissioner, with which plan none of the directors were at all familiar except those who had assisted in its preparation, as hereinbefore stated, and said meeting was adjourned.

IV.

Immediately thereafter said Commissioner accompanied by Asa V. Call, one of the directors
711 of said company, and Walter K. Tuller, a private attorney, being persons who assisted for some time in the preparation of the aforesaid documents and in the preparation of the plan and scheme hereinafter mentioned, appeared before the presiding judge of the Superior Court of Los Angeles county and presented at that time an application for an order appointing said Commissioner conservator, order appointing said Commissioner conservator and restraining order, application for order to liquidate, order of liqui-

712 dation, petition for order permitting, approving and authorizing rehabilitation, sale and transfer of assets and reinsurance plan and agreement of The Pacific Mutual Life Insurance Company of California and order permitting, approving and authorizing rehabilitation, sale and transfer of assets and reinsurance Plan and agreement of The Pacific Mutual Life Insurance Company of California.

V.

713 That at the conclusion of the directors meeting aforesaid, it was stated to the directors that they were no longer directors and that no one other than the Insurance Commissioner had any power to perform any act upon the part of the corporation. However, said Asa V. Call appeared in court as aforesaid and apparently filed with said court a purported written consent of the corporation, which consent is referred to in the various *order* of the court herein made. That all of
714 the papers filed with, and orders made by, said court were filed and made at the same time; in other words, immediately after the above entitled court made the order appointing said Commissioner as conservator, an application was made for an order to liquidate and wind up the affairs of the company under section 1016 of the Insurance Code, which section provides that after the appointment of the conservator and it shall appear that further efforts to proceed as conservator would be futile, an application may be made

715 for an order for the liquidation or reinsurance or rehabilitation of the corporation. Said section of said code further provides that the court shall not make such an order until after a full hearing upon such application. Contrary to the provisions of said section there was no hearing at all except the presentation of said papers by the Insurance Commissioner and the acquiescence therein by said Call, purporting to represent the corporation, and a brief statement by said Commissioner that the plan was the only one satisfactory to him. Interveners allege that that portion of the order of liquidation that recites that notice has been duly given of the application therefor is wholly untrue and is contrary to the facts except as hereinbefore stated. Interveners further allege that the corporation was not represented in court by its duly authorized attorneys as stated in said order, or at all, nor did the corporation consent to the relief prayed for in said application except as hereinbefore stated. Interveners further deny that a full or any hearing was granted to anyone other than said Commissioner and the persons accompanying him, none of whom had any proper or validly obtained authority to represent the corporation. That immediately thereafter another document, which had previously been prepared, being petition for order permitting, approving and authorizing rehabilitation, sale and transfer of assets and reinsurance plan and agreement of The Pacific Mutual Life

718 Insurance Company of California, the purpose of which was to effect the transfer of all the assets of the corporation to a new corporation to be organized for the purpose by said Commissioner and the aforesaid directors cooperating with him, was offered to the court, whereupon the order permitting same, which said order had previously been prepared and printed, was issued. Interveners allege that the court was, without any power or authority whatever to make said order and to permit the transfer of assets of said corporation for the reason, among others, that the transfer of the assets of said corporation without notice to all persons interested including stockholders, policy holders and creditors of said corporation is without due process of law and in violation of articles V and XIV of amendments to and sections 8 and 10 of article I of the Constitution of the United States.

VI.

720 That on the day following said proceedings a complaint in intervention and for an order to show cause was filed in said proceeding on behalf of the Pacific Mutual Life Insurance Company (hereinafter called the new corporation), which alleged that under the authority of the court given the preceding day the Commissioner had caused said interveners to be duly organized as a corporation and that he had subscribed to the stock thereof, all as stated in the rehabilitation plan as provided by the aforesaid order of the court.

- 721 Subsequent to said order and prior to the filing of the complaint in intervention, the Commissioner had deeded to said new corporation all of the assets of the old corporation and said complaint in intervention asked for an order to show cause directed to the several persons named therein as to why all of the matters theretofore presented to said court should not be ratified and approved. Whereupon, the court issued its order permitting the intervention of said corporation
- 722 and granted and issued the order to show cause therein prayed for.

VII.

- That for a period of several weeks prior to the institution of the court proceedings aforesaid, said Asa V. Call and A. N. Kemp, the president of the old corporation, and their servants, agents, attorneys and employees, and others at this time unknown to the interveners herein, prepared a plan and scheme whereby they could, without
- 723 giving the board of directors of said old corporation, or the stockholders or policy holders and other creditors thereof an opportunity to voluntarily rehabilitate said old corporation, perpetuate themselves, without any substantial investment upon their part, as persons in control of a new corporation which would own all of the assets of the old corporation. Said proposed rehabilitation plan, sponsored by said persons, makes no provision for the ownership of the assets in the new corporation by the stockholders of the old corpo-

724 ration after all claims and creditors have been paid, but, on the contrary, stockholders in the old corporation are entirely, without any notice or hearing whatsoever, deprived of all of the assets owned by them, and in fact they have already been deprived of all assets by the purported order of this court made as aforesaid without due or any notice or hearing whatsoever, and in violation of articles V and XIV of the amendments to, and sections 8 and 10 of article I of the
725 Constitution of the United States.

VIII.

Interveners are informed and believe and upon that ground allege that each and all of the documents filed before the court by the Commissioner were prepared by private counsel at the instance of the persons above named in paragraph VII to the end that they would be used by the Commissioner in the manner and for the purpose for which they were prepared and for the attainment
726 of the objects sought by virtue of the plan and scheme of such persons and to the end that such persons and the purported new corporation formed at their suggestion, instance and solicitation, might be enabled by virtue of a decree of this court, to wrongfully and unlawfully divert and convert to the use and benefit of the new corporation, the assets of the old corporation. That the court appearances as aforesaid were not in any way adverse in character. That the manner in which the proceedings were prepared and in

727 which the cause was conducted deprived, and does
now deprive, and will in the future deprive the
directors, stockholders, policy holders and cred-
itors of the old corporation of their property
without due process of law in violation of articles
V and XIV of the amendments to, and sections
8 and 10 of article I of the Constitution of the
United States, in that they were given no oppor-
tunity whatsoever to propose any plan to retain
the assets in the old company or to propose any
728 plan at any time prior to a time when the assets
of the old company had already been converted
by the purported order of the court heretofore
referred to.

Intervenors are informed and believe and upon
such ground allege that had it not been for the
purported order of the court permitting the trans-
fer of all the assets of the old corporation to the
new corporation, which order is wholly without
authority in law, that a transaction could have
729 been negotiated with the insurance company here-
tofore referred to, which transaction would have
the effect of preserving, without prejudice, the
interests of all parties concerned.

IX.

Intervenors further allege that the only sub-
stantial ground upon which the Commissioner
has predicated the actions heretofore taken is
that the reserves for the non-cancellable policies
are insufficient. In arriving at such a determi-
nation the Commissioner, without any proper or

730 just basis and without the benefit of adequate
actuarial experience to guide him, and based
upon entirely erroneous and improper factors,
made a determination that the sum of approxi-
mately twenty-four million dollars was needed as
additional reserves appropriated to such non-
cancellable policies. The interveners allege that
it could be readily established, if they should ever
be granted a full and open hearing thereon, that
such reserves may be calculated upon a reason-
731 able and proper basis so that said reserves would
be easily and readily restored to the extent neces-
sary without the necessity of depriving the old
company of any of its assets and without the
necessity of causing loss to any policy holder or
creditor.

Wherefore, the intervenors pray that the court
make its order vacating the order of liquidation
made herein and each and every order subsequent
thereto and that said court strike from the files
732 the complaint in intervention of The Pacific Mu-
tual Life Insurance Company, and that it vacate
and set aside the order to show cause issued
thereunder and for such other and further orders
as to this court may seem just and equitable in
the premises.

HAROLD JUDSON,
Attorney for Intervenors.

Verified.

Endorsed: Filed Aug. 6, 1936. L. E. Lamp-
ton, county clerk; by A. G. Stanham, deputy.
D: 11.

733 In the Superior Court of the State of California, in and for the County of Los Angeles.

Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, petitioner, vs. Pacific Mutual Life Insurance Company of California, a corporation, respondent, Wm. H. Neblett, intervenor. No. 404,673.

734 **Complaint in Intervention to Set Aside and Vacate All Orders of the Court Made Herein Upon the Petition of Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, the Pacific Mutual Life Insurance Company of California, a Corporation, and the Pacific Mutual Life Insurance Company.**

Comes Now Wm. H. Neblett and by leave of the court files this, his complaint in intervention herein, and for cause of action and intervention alleges:

I.

735 That at all times herein mentioned the intervenor was and is the owner and holder of policy No. 547567 issued by the respondent, the Pacific Mutual Life Insurance Company of California, a corporation.

II.

That at all times mentioned herein, the Pacific Mutual Life Insurance Company of California, was and is a corporation incorporated under the laws of the state of California and

736 has had, and still has, its principal place of business in the city of Los Angeles, county of Los Angeles, state of California; that, for the purposes of brevity, said corporation is hereinafter referred to as Old Company.

III.

That at all times herein mentioned Pacific Mutual Life Insurance Company was and is a corporation incorporated under the laws of the state of California, having its principal offices
737 and place of business in the city of Los Angeles, county of Los Angeles, state of California, and for the purposes of brevity said corporation is hereinafter referred to as New Company.

IV.

That at all times herein mentioned Samuel L. Carpenter, Jr., was and is purporting and assuming to act as Insurance Commissioner of the State of California, and that for the purposes of
738 brevity said Samuel L. Carpenter, Jr., is hereinafter referred to as petitioner.

Intervenor further alleges on information and belief that prior to the appointment of said Samuel L. Carpenter, Jr., as said Insurance Commissioner of the State of California it had been determined by those officers of the Old Company who are present officers and directors of the New Company that the Old Company would be liquidated and its assets transferred to New Company, and it was agreed and understood be-

739 tween these persons that the said Samuel L.
Carpenter, Jr., would, if possible, be appointed
as said Insurance Commissioner in order that
there would be an Insurance Commissioner
friendly to them at the time of the said prede-
termined liquidation and sale of assets of Old
Company to New Company; that subsequently,
said Samuel L. Carpenter, Jr., was appointed
Insurance Commissioner by the governor of the
state of California, through the efforts and at
740 of the Old Company who are officers
and directors [R. D. W. by E. W. G.]
the request of the said officers and directors of
the New Company.

V.

Intervenor alleges on information and belief
that heretofore, to-wit, on or about the 22nd day
of July, 1936, petitioner, acting solely under the
domination and at the direction of the said per-
sons who were directors and officers of the Old
741 Company, and who are now officers and directors
of the New Company, and not using the slightest
judgment or discretion of his own, instituted the
above entitled proceedings. Intervenor is in-
formed and believes, and upon such information
and belief alleges that said proceedings were com-
menced and instituted in furtherance of a con-
spiracy wherein the said officers and directors of
the Old Company who are now officers and di-
rectors of New Company, heretofore referred to
in paragraph IV hereof, sought to gain control

742 of the assets and business of Old Company. Intervenor further alleges, on information and belief, that an additional object of said conspiracy was the prevention of the consummation of a plan for the rehabilitation of Old Company, then in process of negotiation, wherein the Occidental Life Insurance Company, a California corporation, had offered to purchase from said Old Company all of said Old Company's assets and had offered to reinsure and continue in full
743 force and effect all of the policies of insurance of Old Company, including this Intervenor's policy.

VI.

Intervenor alleges, on information and belief, that prior to the filing of this complaint in intervention, petitioner, in accordance with a plan and scheme prearranged by and between petitioner and the said officers and directors of the Old Company who are now officers and directors of
744 New Company, made application for the following orders to the court herein, falsely representing that said Old Company was insolvent within the terms and provisions of the Insurance Code of California: (1) Order appointing conservator and restraining order; (2) Order of liquidation; (3) Order permitting, approving and authorizing rehabilitation, sale and transfer of assets and reinsurance plan and agreement of the Pacific Mutual Life Insurance Company of California.

745 That the court, induced by said false representation, made and entered the said orders and all the other judgments, orders and decrees heretofore made herein, upon the application of petitioner—Old Company and New Company. All of said orders are hereby incorporated herein by reference in their entirety the same as though set forth herein in full.

° VII.

746 Intervenor alleges on information and belief that the rehabilitation, sale and transfer of assets and reinsurance plan and agreement of the Pacific Mutual Life Insurance Company of California is not the best possible plan for the protection of policy holders of the Old Company, as was represented by petitioner; that, on the contrary, under said plan, the protection and value of said policies of insurance, including that of
747 intervenor, will be greatly lessened and impaired. Intervenor further alleges, upon information and belief, that if the sale and transfer of said assets from said Old Company to said New Company is set aside and the sale of said assets to said Occidental Life Insurance Company is authorized and affected, the interests of all said policy holders, including that of this intervenor, will be more fully and adequately protected.

VIII.

748

That the orders, judgments and decrees herein referred to in paragraph VI hereof, are unlawful, void and of no force and effect for the reason that no hearings of motions for said orders were had as required by section 1016 of the Insurance Code of the state of California. Intervenor alleges on information and belief that said orders were all signed *ex parte* and without notice to the policy holders, in direct violation of, the provisions of section 1016 of the Insurance Code providing that no such orders are to be made until after a full hearing of motions therefor. Intervenor alleges, upon information and belief, that no hearing was had at all.

749

IX.

Intervenor alleges on information and belief that the orders, judgments and decrees herein referred to in paragraph VI hereof are unlawful, void and of no force and effect for the reason that at no time mentioned therein has the Old Company been insolvent within the terms and provisions of the Insurance Code of California.

750

X.

That the orders, judgments and decrees herein referred to in paragraph VI hereof are unlawful, void and of no force and effect for the reason that each of them was and is a violation of the

751 intervenor's rights under the following provisions of the Constitution, of the state of California:

Sections 7, 11, 13, 16, 21 and 22 of Article 1.

Section 1 of Article III.

Section 1 of Article XII.

XI.

That the orders, judgments and decrees herein referred to in paragraph VI hereof are unlawful, void and of no force and effect for the reason
752 that each of them was and is in conflict with section 1 of the Fourteenth Amendment to the Constitution of the United States!

Wherefore, intervenor prays judgment as follows: That the court make its order vacating and setting aside all orders of the court heretofore made herein upon the petition of Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, the Pacific Mutual Life Insurance Company of California, a corporation,
753 and the Pacific Mutual Life Insurance Company, a corporation, and for such other and further orders as to this court may seem just and equitable in the premises.

R. DEAN WARNER,

Attorney for Intervenor Wm. H. Neblett.

Verified.

Endorsed: Filed Aug. 10, 1936. L. E. Lamp-ton, county clerk; by A. G. Stanham, deputy.
D 11.

754 In the Superior Court of the state of California in and for the county of Los Angeles.

Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, petitioner, vs. The Pacific Mutual Life Insurance Company of California, respondent, Carl C. Katleman appearing for himself and all others similarly situated, intervenor. No. 404673.

755 **Petition of Intervention by Carl C. Katleman, for Himself and All Others Similarly Situated.**

Comes now, Carl C. Katleman, and by leave of the court first obtained, files this, his complaint in intervention for himself, for Dr. Barney Kully of Los Angeles, California; Henry Monsky, William Grodinsky, J. Harry Kulakofsky, Morris Levey, Harry Rubenstein, all of Omaha, Nebraska; and for all others similarly situated, and for cause of action and intervention

756 alleges:

I.

That your petitioner of intervention is at this time the owner of two certain policies issued by the respondent herein under date of January 1924, said policies being known as non-cancellable income policies, bearing numbers 4645358 and 4645357; that all of the premiums due under the terms of said policies have been paid at or

757 prior to the time same became due and said policies and each of them are at this time in full force; that said policies are at this time very valuable and your petitioner has been informed and *therefor* alleges the fact to be that it would be impossible for him to replace said policies in any company that is writing insurance of that type.

II.

758 That Dr. Barney Kully is a resident of the city of Los Angeles, California; that Henry Monsky, William Grodinsky, J. Harry Kulakofsky, Morris Levey and Harry Rubenstein are all residents of the city of Omaha, Nebraska and are each the owners of one or more of the non-cancellable income policies issued by the respondent herein; that all of said policies are at this time more than ten years old and that all

759 of the premiums required to be paid under the terms of said policies and each of them have been, so that said policies and each of them are at this time in full force and effect; that said policies are at this time very valuable and it would be impossible to replace same in any company writing this type of insurance; that each of the above have requested your petitioner to appear for and represent them at this hearing.

III.

760

That your petitioner in intervention appears not only for himself and all those specifically set forth in paragraph II but for all others similarly situated who are at this time the owners of non-cancellable income policies, issued by the respondent herein, that are now in full force and effect.

761

That your petitioner in intervention appearing for himself and all others similarly situated objects to the purported sale of all of the assets of the respondent herein to the Pacific Mutual Life Insurance Company for the reason that sale is contrary to law and in violation of the rights of all the holders of the non-cancellable policies.

IV.

762

Your petitioner further alleges that all of the assets of the respondent herein are subject to any and all claims that might at any time hereafter arise under policies now outstanding and known as non-cancellable policies; that it would be a fraud upon the holders of said policies to permit the transfer of any of the assets of respondent without fully protecting all of the rights of the holders of the non-cancellable policies in accordance with the terms and

763 agreements provided in said policies and each of
them; that the Insurance Commissioner be pre-
vented from allowing certain preferences to cer-
tain types of policies issued by respondent to the
damage of the holders of the non-cancellable
policies.

V.

764 That the court refuse to confirm the transfer
of the assets of respondent to the Pacific Mu-
tual Life Insurance Company as provided for
in Exhibit 'A' unless the rights of all of the
policy-holders are fully protected and given the
same treatment; That the court refuse to con-
firm the agreements provided for in Exhibits
'B' 'C' and 'D' for the reason that they attempt
to deprive the holders of non*carcellable policies
of their contractual rights and attempt to prefer
certain types of policies as against certain other
765 types; that the holders of all types of policies
issued by respondent have the same rights to look
to all of the assets of respondent in accordance
with the terms of their policies; that there is no
provision under the laws of the state of Cali-
fornia giving the Insurance Commissioner the
right to arbitrarily reduce the payments under
certain types of policies and not against all
types issued by respondent.

VI.

766

Your petitioner further alleges that the attempt of the Insurance Commissioner of the State of California to force the holders of non-cancellable policies to accept sums substantially smaller than those provided for in their policies is an attempt to re-write the policies issued by respondent and is in direct violation of the property, and contractual rights of said policy holders and is in violation of the laws and Constitution of the state of California and of the Constitution of the United States and is an attempt to deprive petitioner and all others similarly situated, of their property without due process of law and further is an attempt to vary the terms of the policies and the contractual rights therein contained.

767

VII.

Your petitioner further states that a report has been issued by the Insurance Commissioner of the State of California co-operating with the insurance commissioners of certain other states wherein it is set forth that the affairs of respondent have not been properly operated for more than ten years, resulting in large losses to the policy-holders and in that connection your petitioner alleges that the Insurance Commissioner of the State of California and his predecessors in office have been guilty of gross malfeasance, in permitting same to continue, to the great damage to the policy holders.

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VIII.

Your petitioner further states that in reports heretofore issued by Bests, a recognized insurance authority, that certain charges have been made with reference to certain investments made by the officers and directors of respondent that resulted in large losses to respondent; that the Insurance Commissioner of the State of California and his predecessors in office must have
770 had knowledge of said losses but no steps were taken to investigate whether or not said officers and directors might be personally liable by reason of said losses.

IX.

Your petitioner further states that he has been advised and therefore alleges upon information and belief, that a large number of the former
771 officers and directors of respondent are the officers and directors of the Pacific Mutual Insurance Company and in that connection your petitioner alleges that said officers and directors have demonstrated that they are incapable of properly managing and operating an insurance company so as to properly protect the interests of the policy holders and more particularly the interests of the non-cancellable policy holders.

772

X.

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774

Your petitioner further states that he has been advised, and therefore alleges upon information and belief, that notwithstanding the losses that have occurred during the past ten years as set forth in the report recently issued by the Insurance Commissioner of the State of California and other states that the respondent has been permitted to declare and pay dividends to its stock-holders all to the damage of the policy holders and particularly the non-cancellable policy holders; That the Insurance Commissioner of the State of California and his predecessors in office must have had knowledge of the payment of said dividends notwithstanding the losses that were incurred in the operation of respondent's business but no proceedings have been instituted to recover any of said dividends unlawfully declared and paid; your petitioner states that he has been advised, and *therefor* alleges upon information and belief, that enormous salaries have been paid to the officers and directors of respondent during the past ten years and that no attempts were ever made to recover any of the salaries so paid.

XI.

Your petitioner further states that by reason of the report issued by the insurance commissioners of several states as hereinbefore referred to, that the Insurance Commissioner of the State

776 of California had knowledge of the affairs of respondent and notwithstanding permitted said respondent to continue to issue non-cancellable policies and that at this time the Insurance Commission— of the State of California requires that on said policies issued as recently as July 1936 that the holders of same should accept ninety (90%) per cent of the face of said policies; that under the terms of a communication issued by said Insurance Commissioner your petitioner 776 would receive but thirty-five (35%) per cent of the original monthly benefit provided for in the policies issued by respondent to your petitioner; that in lieu of accepting such reduced protection that claims can be filed same to be prorated from certain funds to be obtained; that the amount to pay such claims would be wholly inadequate to properly pay petitioner and all others similarly situated; that all of the assets of the respondent should be utilized to protect all of 777 the policy holders and no distinction or preference should be permitted.

X.

Your petitioner further states that the Insurance Commissioner of the State of California is not properly protecting the interests of your petitioner and all other similarly situated and therefor objects to his continuing as the liquidator of the respondent in that he is attempting to permit certain preferences in favor of certain policy holders as against the interest of other

778 types of policy holders and more particularly the holders of non-cancellable policies.

Wherefor your petitioner appearing for himself, for all those specifically set forth in Par. 2 and for all others similarly situated, prays that the purported transfer of the assets of the respondent be set aside as being without legal authority, that an order be entered that the holders of all types of policies should be treated equally and on the same basis; that no single

779 type of policy holders shall be preferred as against any other type or group, that the present officers and directors shall be removed for the reason that they have failed to properly operate the respondent's business, all to the damage of the policy holders of every type, that an investigation be ordered to determine if there is any liability against any of the former or present officers and directors for any acts that resulted in losses to respondent and for such other, further
780 and additional relief as may appear to be just and equitable in the premises.

CARL C. KATLEMAN,

CARL C. KATLEMAN,

In Pro. Per.

CARL C. KATLEMAN,

Attorney at Law, for self and others.

Verified.

Endorsed: Filed Aug. 10, 1936, 4:10 P. M.
L. E. Lampton, county clerk; by R. J. Curtis,
deputy.

781 In the Superior Court of the state of California, in and for the county of Los Angeles.

Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, petitioner, vs. The Pacific Mutual Life Insurance Company of California, respondent; Pacific Mutual Life Insurance Company, intervenor.

Harold S. Cook, intervenor. No. 404673.

782 **Complaint in Intervention on Behalf of Shareholders.**

Leave of court so to do having been first obtained Harold S. Cook for himself and for and on behalf of all other persons similarly situated who desire to avail themselves of such representation and share the cost thereof, hereby intervenes in the within action and for his complaint in intervention alleges as follows:

I.

783 At all times herein mentioned Samuel L. Carpenter, Jr., has been and now is the duly appointed, qualified and acting Insurance Commissioner of the State of California.

II.

At all times herein mentioned The Pacific Mutual Life Insurance Company of California has been and now is a corporation organized and existing under and by virtue of the laws of the state of California, and at all said times to

784 July 22, 1936, said corporation has been actively engaged in the life, health and accident insurance and annuity business in the state of California and elsewhere throughout the United States. Said corporation is hereinafter sometimes referred to as the "Old Company."

III.

At all times herein mentioned since about July 22, 1936, Pacific Mutual Life Insurance Com-
785 pany has been and now is a corporation organized and existing under and by virtue of the laws of the state of California. Said corporation is hereinafter sometimes referred to as the "New Company."

IV.

At all times herein mentioned intervenor Harold S. Cook has been and now is a shareholder of the Old Company, being the owner during all of that time of not less than four hundred six (406) shares of the capital stock of
786 said corporation. Said intervenor is hereinafter sometimes referred to as the "Intervening Shareholder."

V.

On or about August 3, 1936, the intervening shareholder and Allan C Balch, Ferdinand R. Bain, Shannon Crandall and H. H. Wagenseller associated themselves together as a protective committee of the stockholders of The Pacific

787 Mutual Life Insurance Company of California
for the purpose of acting and appearing for and
on behalf, and representing the interests, of such
shareholders of such Old Company as desired to
avail themselves of such representation in con-
nection with the within proceedings. Thereafter
numerous shareholders of said Old Company
authorized and numerous other shareholders are
from time to time authorizing, said persons to
act as their attorney in fact to take such steps
788 as they might deem advisable to investigate the
so-called Rehabilitation, Sale and Transfer of
Assets and Reinsurance Agreement, referred to
in the within proceedings, and to protect their in-
terests as shareholders of said Old Company,
and in that connection to take such proceedings
in court or otherwise, either in the name of said
shareholders or in the name of others, as said
committee might deem advisable. A true and
correct copy of the form of written authoriza-
789 tion which has been and is being executed by
said shareholders is attached hereto, marked
"Exhibit A" and by this reference made a part
hereof as though fully set forth. In this connec-
tion the intervening shareholder alleges that at
noon on August 10, 1936, shareholders owning
approximately fifty thousand (50,000) shares of
the capital stock of said Old Company had
authorized said committee to act for them in
accordance with the terms of said Exhibit A.

790

VI.

791

By reason of the facts hereinabove alleged the intervening shareholder appears herein for himself and for and on behalf of all of the shareholders hereinabove in paragraph V referred to and for and on behalf of all other shareholders of said Old Company who may hereafter authorize him and/or said protective committee to act for them. In this connection the intervening shareholder alleges further that the number of said shareholders is large and that it would be and is impracticable to bring them all before the court and for that reason said intervening shareholder sues and appears herein for the benefit, and for and on behalf, of all of said shareholders and of all other shareholders who may desire to avail themselves of such representation and agree to share the expense thereof.

VII.

792

On or about July 22, 1936, petitioner herein, as Insurance Commissioner of the State of California, filed in the within court an application for an order of said court appointing him conservator of said Old Company and thereafter on the same day an order of said court was made and entered under and by virtue of the terms of which said petitioner was appointed conservator of said Old Company and of its business, assets and affairs, and said petitioner was ordered to

793 take possession forthwith of all the books, records, property and assets of said Old Company and as conservator to conduct its business for the benefit of its policy holders, creditors and stockholders and of the public in general.

VIII.

794 On July 22, 1936, and concurrently with the filing of the application for appointment of conservator hereinabove in paragraph VII referred to, said petitioner filed in the within court an application for an order to liquidate, and thereafter and on the same day an order of said court was made and entered under and by virtue of the terms of which said petitioner was appointed liquidator of the assets and business of said Old Company, all of the right, title and interest of said Old Company in and to its assets and property was vested and confirmed in said petitioner as liquidator, and said petitioner as liquidator 795 was ordered to conduct, manage and operate the business of said Old Company, to wind up and liquidate its business, and to formulate, prepare and submit forthwith if possible for the approval of said court a plan and agreement of reinsurance and rehabilitation or sale and transfer of assets.

IX.

On July 22, 1936, and concurrently with the filing of the applications hereinabove in paragraphs VII and VIII referred to, said petitioner

796 filed in the within court a petition for an order permitting, approving and authorizing Rehabilitation, Sale and Transfer of Assets and Reinsurance Plan and Agreement of said Old Company and thereafter and on the same day an order of said court was made and entered approving said proposed plan and agreement, ordering said petitioner forthwith to organize a new corporation and to subscribe to its capital stock by the use of funds and assets under his control

797 as liquidator of said Old Company, authorizing him forthwith to execute an agreement in form substantially as set forth in said plan, ordering said petitioner forthwith to transfer and set over to said New Company all of the assets of the Old Company, except the stock of said New Company and except any claims which the Old Company might have against any of its present or past officers, directors or employees or against any other person by reason of wrongful or illegal

798 acts or omissions of any of such past or present officers, directors or employees, authorizing and ordering said petitioner to do any and all things necessary, desirable or proper to carry out the terms of said plan and agreement, and directing the officers, directors, agents and employees of the Old Company to cooperate with and assist said petitioner and the New Company in the effectuation of said plan by the execution of such documents and the doing of such acts in connec-

799 tion therewith as might be requested of them by
said petitioner. A copy of said plan and agree-
ment is attached to the petition for approval
thereof on file herein and by this reference the
same is incorporated in this complaint in inter-
vention as though fully set forth.

X.

800 On July 23, 1936, said petitioner filed in the
within court a petition for approval of an amend-
ment to said plan and agreement and thereafter
on the same day said court made and entered its
order approving said amendment. A copy of
said amendment is attached to said petition for
an order approving the same and by this refer-
ence it is incorporated herein as though fully set
forth.

XI.

801 Immediately upon the making of the orders
hereinabove referred to said petitioner and the
New Company executed said plan and agreement
and thereupon all of the assets of the Old Com-
pany, with the exceptions hereinabove referred
to, were transferred and conveyed to the New
Company and ever since that time said New
Company has been and now is in the sole, and
exclusive possession thereof and said company
has been and now is conducting the insurance
and annuity business heretofore conducted by the
Old Company.

802

XII.

The intervening shareholder is informed and believes and therefore alleges that all of the orders hereinabove in paragraphs VII, VIII and IX referred to were made concurrently and contemporaneously and without the lapse of any time other than the time required for the signing thereof; that no hearing or other proceeding in connection therewith was had by or before the
803 within court and that no evidence in connection therewith was presented to or heard by said court other than the allegations of the various applications and petitions hereinabove referred to. The intervening shareholder is further informed and believes and therefore alleges that at no time prior to or concurrently with the making of said orders, or prior to or concurrently with the making of the order hereinabove in paragraph X
804 referred to, was there presented to the within court, nor did the court have, any impartial or independent appraisals, data or information upon which to base a consideration and determination of the fairness, equity and legality of the proceedings herein taken and/or of said plan and agreement.

805

XIII.

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At no time prior to or concurrently with the making of any of said orders was any notice thereof or of the proceedings for the procurement thereof given to any shareholder of the Old Company nor was any such shareholder ever given any right or opportunity to appear and be heard in or in connection with said proceedings and/or the making of said orders, or any of them. The consent of the shareholders of the Old Company to said proceedings has never been requested or obtained nor has the consent of said shareholders or any of them to the aforesaid transfer and conveyance of assets ever been requested or obtained. In this connection the intervening shareholder alleges that the assets so transferred and conveyed to the New Company were and are substantially all of the assets of the Old Company and were all of the assets of said Old Company which at that time were being or theretofore had been used in the conduct and operation of the business of said Old Company.

XIV.

The intervening shareholder is informed and believes and therefore alleges that at some time prior to July 22, 1936, the exact date being unknown to him, the directors of the Old Company, or some of them, acting in concert and collaboration with said petitioner formed a plan or design to eliminate the interests of the shareholders of

808 the Old Company in and to its business and as-
sets, to create a new corporation which would
take over and conduct and operate the assets and
809 business of the Old Company, thereby to hinder,
delay and defraud certain of the policy holders
and creditors of said Old Company in the collec-
tion and satisfaction of their claims whereas
other policy holders and creditors of said Old
Company would be preferred in the collection and
satisfaction of their claims; and agreed that in
810 order to accomplish said plan and design proceed-
ing substantially such as those which have been
taken herein should be taken for the purpose of
accomplishing said transfer of assets, delay and
hindrance of some creditors and preference of
others, and said elimination of the interests of
the shareholders of the Old Company. The
intervening shareholder is further informed and
believes and therefore alleges that the proceed-
ings had and taken herein have been and are but
810 incidents in and a part of said preconceived plan
and design.

XV.

The intervening shareholder is informed and
believes and therefore alleges that the various
findings and determinations of said petitioner as
to the condition of the Old Company and the
necessity for taking the various proceedings here-
inabove alleged to have been taken were arbitrary
and capricious and not supported by the facts in

811 that said Old Company was not at any of the
times said proceedings were taken insolvent or
in such condition that its further transaction of
business would have been hazardous to its policy
holders or creditors or to the public. The inter-
vening shareholder is further informed and be-
lieves and therefore alleges that the finding and
determination of said Commissioner that further
efforts to proceed under section 1011 of the In-
surance Code would be futile and not to the
812 best interests of its policy holders, creditors,
stockholders and the public generally and that the
interest of such persons would be served by
granting an order of liquidation, were and are
arbitrary and capricious, unfounded in fact, and
made without any independent and impartial data
or information to support them and without any
attempt by said petitioner to manage, operate or
conduct the business and affairs of said Old
Company as conservator and without any at-
813 tempt on his part by such actual operation to
determine whether conservation could be effected
and liquidation avoided.

XVI.

The intervening shareholder further alleges
that said purported Rehabilitation, Sale and
Transfer of Assets and Reinsurance Plan and
Agreement was and is unfair and inequitable and
in violation and disregard of the rights of the
shareholders of said Old Company in that said

814 plan does not preserve to said shareholders the full benefit of their interest in the assets and business of said Old Company remaining after the just claims of all policy holders and creditors have been paid and satisfied but on the contrary transfers and reserves for the benefit of said New Company substantially all of the interest remaining in the assets and business of the Old Company after allowance for the claims of policy holders and creditors; and further in that the
815 consideration agreed to be paid by the New Company for the Old Company's assets and business is grossly inadequate and substantially less than the fair value of said assets. Said plan and agreement is further unfair and inequitable and in violation and disregard of the rights of the shareholders of said Old Company in that as the intervening shareholder is informed and believes and therefore alleges no attempts were made prior to the consummation of said plan and
816 agreement to obtain any offers from others for the purchase of said assets and business or re-insurance of the policy holders of the Old Company or rehabilitation of the Old Company.

XVII.

By reason of the foregoing facts the proceedings had and taken, and the orders made and entered herein are and each of them is void, irregular, arbitrary and without authority in law, and said proceedings and orders are and

817 each of them is void and unconstitutional in that
they deprive and have deprived the shareholders
of said Old Company of their property without
due process of law in violation of section 1 of
article XIV of amendments to the Constitution
of the United States and of section 13 of article I
of the Constitution of the state of California,
and further in that they impair and have im-
paired the obligation of the contracts of said
818 shareholders in violation of section 10 of article I
of the Constitution of the United States and of
section 16 of article I of the Constitution of the
state of California.

XVIII.

Further by reason of the foregoing facts the
intervening shareholder alleges that the statute
under and in pursuance of which the said pro-
819 ceedings and orders purport to have been taken
and made, being article 14 of chapter 1 of part 2
of the Insurance Code of the state of California,
is void and unconstitutional in so far as it author-
izes and permits said proceedings and orders in
that it deprives the intervening shareholder and
all other shareholders of said Old Company of
their property without due process of law, in
violation of section 1 of article XIV of amend-

820 ments to the Constitution of the United States and of section 13 of article I of the Constitution of the state of California, and further in that it impairs and authorizes the impairment of the obligation of the contracts of said shareholders in violation of section 10 of article I of the Constitution of the United States and of section 16 of article I of the Constitution of the state of California.

821 Wherefore, the intervening shareholder, for himself and for and on behalf of all other persons similarly situated, prays that said purported Rehabilitation, Sale and Transfer of Assets and Reinsurance Plan and Agreement be not approved, that all proceedings had and taken and all orders heretofore made herein be vacated and set aside, that the intervening shareholder's costs incurred herein including a reasonable attorneys' fee be allowed and that he have such other and
822 further relief as to the court may seem proper.

LOEB, WALKER AND LOEB,

By HERMAN F. SELVIN,

Attorneys for Said Intervening Shareholder.

823

EXHIBIT A.

Protective Committee of Stockholders of
The Pacific Mutual Life Insurance Company of
California,

Room 717 I. N. Van Nuys Building,
210 West Seventh Street,
Los Angeles, California.

Gentlemen:

824 I am the owner of.....shares of stock of
The Pacific Mutual Life Insurance Company of
California.

825 In response to your letter dated August 3,
1936, signed by Messrs. Allan C. Balch, Ferdi-
nand R. Bain, Harold S. Cook, Shannon Cran-
dall and H. H. Wagenseller as a Protective Com-
mittee of the Stockholders of The Pacific Mutual
Life Insurance Company of California, herein-
after referred to as the "old company", I hereby
designate and appoint as my attorney-in-fact the
said committee as it now is or from time to time
may be constituted, to take such steps as it may
deem advisable to investigate the so-called "Re-
habilitation, Sale and Transfer of Assets and
Reinsurance Agreement" with Pacific Mutual
Life Insurance Company, hereinafter referred to
as the "new company", and to protect my inter-
ests as a stockholder of the old company.

826 Without limiting the effect of the foregoing general language, I hereby authorize my said attorney-in-fact to employ legal counsel and such other persons as in its judgment may be necessary, to conduct negotiations in my behalf and to protect my said interests by proceedings in court or otherwise, either in my name or in its name or in the name of others, all in such manner as the committee, in the exercise of its discretion, 827 may deem advisable, but the committee shall not, for me, approve any agreement for the rehabilitation and/or liquidation of the old company or any agreement for the sale and transfer of its assets or any agreement for the mutualization of the old company or of the new company or any agreement of reinsurance, without my prior approval.

I agree that the committee shall consist of the 828 persons named above and of such other persons as they may select to act with them either in addition to or to replace any such persons, that the committee will formulate its own rules of procedure and rules for the addition, removal and/or substitution of its members, and that the members of the committee will serve without compensation. I understand that the committee will act for other stockholders of the old com-

829 pany as well as for myself and since it will act without compensation I agree that it will have no liability to me except in the event of its own gross negligence.

I further agree to pay a pro rata proportion of the expenses incurred by the committee based upon the number of shares owned by me in relation to the whole number of shares of stock represented by the committee under similar powers
830 of attorney, but subject to the express limitation that in no event, except with my express written consent, shall the expense to me, including attorneys' fees, exceed ten (10) cents for each share of stock owned by me.

Dated at....., 1936.

.....
(Signature of Stockholder)

Please Print Name and Address Below.

831

Address:
(Street and Number)

(City) (State)

Telephone Number:

Verified.

Endorsed: Filed Aug. 10, 1936. L. E. Lamp-
ton, county clerk; by A. G. Stanham, deputy.

D. 11

832 In the Superior Court of the state of California, in and for the county of Los Angeles.

Samuel L. Carpenter, Jr., Insurance Commissioner, etc., plaintiff, vs. Pacific Mutual Life Insurance Company of California, a corporation, defendant. No. 404-673.

Appearance of William Weisman and Return to the Order to Show Cause.

I.

833 Comes now William Weisman and makes his appearance herein as a respondent owning and holding a non-cancellable policy of insurance issued by The Pacific Mutual Life Insurance Company of California, and makes his return to the order to show cause as issued by the Honorable Douglas L. Edmonds, judge of this court, on the 23rd day of July, 1936.

II.

834 Your respondent, William Weisman, alleges that he is the owner and holder of non-cancellable policy No. 4616542 issued by The Pacific Mutual Life Insurance Company of California, a corporation, on the 7th day of April, 1921, to and in favor of your respondent William Weisman. That under the terms of said policy an annual premium is required to be paid by your respondent to The Pacific Mutual Life Insurance Company of California. Your petitioner alleges that he has paid said annual premium as and when

835 due, that said policy is in full force and effect,
and was in full force and effect on the 22nd day
of July, 1936, at the time of the filing of these
proceedings herein.

III.

Your petitioner objects to the court making
any order confirming and approving, or confirm-
ing or approving or ratifying the proposed plan
by which the assets of The Pacific Mutual Life
836 Insurance Company of California, a corpora-
tion, have been transferred or are to be trans-
ferred to a new corporation known as Pacific
Mutual Life Insurance Company; objects to the
confirmation and approval of the execution and
delivery of a deed and bill of sale by Samuel L.
Carpenter, Jr., as Insurance Commissioner of the
State of California and as liquidator of The
Pacific Mutual Life Insurance Company of Cali-
fornia transferring and setting over to Pacific
837 Mutual Life Insurance Company the assets of
The Pacific Mutual Life Insurance Company of
California, and objects to any order approving
the terms and conditions upon which it is pro-
posed to make said transfer, to confirm said
transfer, to approve said transfer, to-wit, the
rehabilitation, sale and transfer of assets and
reinsurance plan and agreement as proposed July
22, 1936, by Samuel L. Carpenter, Jr., as Insur-
ance Commissioner of the State of California.

838

IV.

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For ground of said objection your respondent alleges that The Pacific Mutual Life Insurance Company of California was, on the 31st day of December, 1935, and has been at all times since said date, insolvent, and that it had been advised by its actuaries for several years prior to December 31, 1935, that it could not continue to write non-cancellable policies at the premium which it was then and thereafter charging to the policyholder. That there is a deficiency, as your petitioner is informed and believes and therefore alleges, of approximately \$23,000,000. That the eight directors of the old company, The Pacific Mutual Life Insurance Company of California, who for several years past have directed the destinies and policies of said company, are now the directors purportedly selected by Samuel L. Carpenter, Jr., to be the directors of the new Pacific Mutual Life Insurance Company, the company alleged to have been formed by Samuel L. Carpenter, Jr., and to whom he is proposing to transfer and sell the assets of the old company.

V.,

That the Insurance Commissioner has attempted to act and is acting arbitrarily and capriciously and in disregard of the established rules of law, and proposes by the said transfer and by the proposed application to transfer to

841 obtain the judicial sanction and approval of this court to an arbitrary act, an act which will deprive your petitioner and the other persons, policyholders of the same class, of their contract rights without due process of law and in violation of the Fourteenth Amendment to the Constitution of the United States. That the proposed act of Samuel L. Carpenter, Jr., as Insurance Commissioner of the State of California will, if confirmed by this court, deprive your petitioner 842 of his property without due process of law and will deprive thousands of other persons similarly situated of their property without due process of law and without notice and without affording the class of which this respondent is one, their day in court.

VI.

Petitioner alleges that the proposed plan, if carried out, would in effect transfer all of the assets of the old company, The Pacific Mutual 843 Life Insurance Company of California, together with the reserves created for the benefit of each class of policyholder, together with the reserve created for non-cancellable income policies, of which your petitioner is one, to the new corporation, Pacific Mutual Life Insurance Company. That the new company does not propose to be bound by the terms of the policies held by your petitioner and other policyholders similarly situated, but does propose to take the reserves for

- 844 the benefit of such holders of the non-cancellable income policies as may agree to the terms which are stated in the proposed plan. That under the terms of said proposed plan the policy of your petitioner and the other non-cancellable income policyholders are destroyed, the terms of the policies are changed, and in the event your petitioner does not consent to such destruction and change then your petitioner is left without a remedy, and the court by the proposed order can-
- 845 cels the policy of your petitioner and performs and does an act at the request and instance of The Pacific Mutual Life Insurance Company of California which it, the said company, could not under the terms of its agreement with your petitioner, do. That under the terms of the agreement between your petitioner and The Pacific Mutual Life Insurance Company of California the policy is, as to your petitioner, non-cancellable. That your petitioner and others in the same class
- 846 have created a trust fund known as a reserve; that said funds are held in trust and were held in trust by The Pacific Mutual Life Insurance Company of California, and of said trust your petitioner and others of the same class are beneficiaries. The proposed plan attempts to create, different terms, different beneficiaries, the elimination of part of the beneficiaries, the ignoring of the rights of the beneficiaries, and the transfer of said trust funds to a new and different trustee, Pacific Mutual Life Insurance Company,

847 without the consent and against the will of the
beneficiaries including your petitioner.

VII.

This respondent alleges this court is without jurisdiction to alter, vary and amend the terms of his contract or the terms of his non-cancellable income policy. That this court is without jurisdiction to vary the terms of his contract and/or to place beyond the reach of and the benefit of your petitioner the trust fund created under the
848 terms of his contract for his and the benefit of others similarly situated. Your petitioner alleges this court is without jurisdiction and it is contrary to law to transfer and give to others funds held in trust for the benefit of your petitioner and others similarly situated.

VIII.

849 Petitioner alleges that it is unjust, inequitable and an arbitrary act of the Corporation Commissioner, not authorized or justified by the law or the facts, and the confirmation of the proposed agreement would do great, serious and irreparable injury to your petitioner. Petitioner alleges that because of his increased age, to-wit, the elapse of time from the making of his original non-cancellable income policy as hereinbefore set forth and the present date, a period of sixteen years, and because of the change of his condition of health, to-wit, your petitioner alleges he is in much poorer and impaired health than he was at

850 the time of the taking out of said policy (your
petitioner being in good and sound health at the
time of the issuance of said policy), that peti-
tioner is unable to obtain insurance of the same
type from any other existing insurance company
and will continue to be unable to obtain a similar
policy or similar insurance elsewhere throughout
the world. That because of the increase of age
and a change in physical condition your peti-
tioner, if he were able to obtain insurance, would
851 be compelled to pay an exorbitant and impossible
premium therefor. Petitioner alleges that he
has a vested and fixed right in and to the re-
serves created by him and by persons holding
policies of the same type in the non-cancellable
group.

Wherefore, your petitioner prays, on behalf
of himself and all other persons similarly situ-
ated, that the court deny the petition of Pacific
Mutual Life Insurance Company, and that the
852 court make such other and further order as is
meet in the premises.

RUPERT B. TURNBULL,
Attorney for William Weisman.

Verified.

Endorsed: Received copy of the within docu-
ment Aug. 10, 1936. O'Melveny, Tuller & Myers,
by (Invalid unless Countersigned) attorney for

Filed Aug. 10, 1936, 12:08 p. m. L. E. Lamp-
ton, county clerk; by C. H. Holdredge, deputy.

853 In the Superior Court of the State of California in and for the County of Los Angeles.

Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, petitioner, vs. The Pacific Mutual Life Insurance Company of California, respondent, Pacific Mutual Life Insurance Company, intervenor. No. 404,673.

Objections to Jurisdiction of Court in Matter of Transfer of Assets and Objections to Rehabilitation Plan.

854

In accordance with the order of court herein, made on July 23, 1936, entitled "Order Permitting Intervention and Order to Show Cause," now comes the intervenor, Roscoe R. Hess, in his own person and respectfully alleges, represents and objects, by way of objection to the proposed order mentioned in paragraph 2 of said order to show cause, to-wit:

I.

855 That this intervenor is the owner and holder of two "Non-Can Policies," as said term is defined in the proposed agreement referred to in said paragraph 2, which policies are in full force and effect and are numbered and dated, as follows:

No. 461,0222, dated June 1, 1921

No. 4619043, dated July 21, 1921.

That intervenor has a contingent claim against the "Old Company," contingent upon the payment of premiums on said policies according to

856 their terms, and the happening of events and disabilities therein mentioned.

II.

That intervener objects to and denies the jurisdiction of the court with respect to the matters referred to in subdivisions (a), (b), (c) and (d) of said paragraph 2 of said order to show cause, upon the following grounds:

857 1. That article 14 of the Insurance Code of the state of California is invalid and unconstitutional and a violation of the Fourteenth Amendment to the Constitution of the United States in that it constitutes a taking of property without due process of law; and of section 10 of article I of the Constitution of the United States in that said article of said code is a law impairing the obligation of contracts, in the following particulars:

858 The provision thereof for the transfer of assets of an insurance company to the commissioner mentioned in section 1016 thereof, coupled with the provision making said commissioner the statutory successor thereof, as set forth in section 1017 thereof, coupled with the provision authorizing the transfer of such assets by the commissioner, as set forth in sections 1037 and 1043 thereof, coupled with the failure of said Act to provide any legally adequate remedy upon, or method of enforcement of, contracts entered into by policy holders with such insurance company, materially affect the obligation of the con-

859 tract, by so far altering and impairing the remedy thereon as to render the right scarcely worth pursuing, with the result thereby of impairing the obligation of the contract itself, within the meaning of the said constitution.

That in particular, although provision is made in said Act for the filing of claims by policy holders upon the insolvency or liquidation of such insurance company, no provision is made therein for reaching any property of the debtor as the
860 same existed at the time the contract was made, and the transfer of the assets of the debtor through the commissioner as a conduit or channel to a transferee which is not required to assume the obligation of such contract, operates in practical effect as an extinguishment thereof, and a taking of property without due process. That in addition, no provision is made for the enforcement of any adequate remedy upon any contract with such insurance company in insol-
861 vency or in liquidation as against the commissioner during the period that he is the statutory successor of such insurance company, or as against any company to which the assets of such insurance company may have been transferred under any plan of rehabilitation mentioned in section 1043 or as implied under section 1037.

III.

That for the reasons hereinabove set forth, the action of the commissioner in purporting to

862 transfer the assets of the old company to the new company, and any order of the court in so approving such proposed transfer is thereby in violation of the constitutional rights of this intervenor.

IV.

That no provision is made in the said Rehabilitation Agreement itself for adequate enforcement of the contract rights of this intervenor inasmuch as none of the assets of the old
863 company can, under the agreement, be subjected to process upon any remedy that may be obtained on such contract rights of this intervenor, and that no reasonably efficient remedy remains (irrespective of whether the Insurance Code itself provides for any such reasonably efficient remedy).

V.

That in effect the Rehabilitation Agreement accomplishes the result of complete liquidation
864 of the obligations of the old company without any equitable distribution of the assets thereof among the creditors of the old company, and without any assignment of such assets for the common benefit of all such creditors.

VI.

That paragraph 8 of the Rehabilitation Agreement is unfair to this intervenor in that the restoration of monthly disability benefits from net profits derived by the new company is entirely subject to the will and caprice of the new

865 company both as to extent, manner and time of application of such net profits, free from any liability whatsoever for any further restoration of benefits to holders of Non-Can policies.

VII.

866 That the limitation in the second paragraph of paragraph 15 of said Rehabilitation Agreement is unfair to this intervener in that at the end of the ten year period, to-wit, on January 1, 1947, the fund of \$10.00 per \$1,000 of non-participating life insurance then existing that would be assumed under the Rehabilitation Agreement would be an amount so small, due to the payment in part of such non-participating life insurance policies that would by their own terms mature during the intervening period, and due to death claims in the said period, as to accomplish only a negligible restoration of benefits on Non-Can policies and quite disproportionate to the necessary reserves for full payment of Non-Can benefits if the figure of the commissioner therefor, of over \$25,000,000.00 is anything but a matter of speculation on the part of the commissioner.

ROSCOE R. HESS,

ROSCOE R. HESS,

Intervener, in Pro. Per.

Endorsed: Filed Aug. 10, 1936, 1:57 p. m.
L. E. Lampton, county clerk; by C. J. Bergquist, deputy:

868 [TITLE OF COURT AND CAUSE.]

Return and Answer of Harold S. Cook to
Order to Show Cause.

Harold S. Cook, a shareholder of The Pacific Mutual Life Insurance Company of California, for himself, and for and on behalf of all other persons similarly situated who desire to avail themselves of such representation and share the cost thereof, hereby appears in response to the
869 order to show cause heretofore issued herein, and as cause why the proposed order therein specified should not be made alleges and specifies the following, to-wit:

I.

Article 14 of chapter 1 of part 2 of the Insurance Code of the state of California, in pursuance and under the authority of which the within proceedings purport to have been and to be taken, is void and unconstitutional in that
870 said article 14 takes and authorizes the taking of property without due process of law in violation of section 1 of article XIV of amendments to the Constitution of the United States and of section 13 of article I of the Constitution of the state of California.

II.

Said Article 14 is further void and unconstitutional in that it impairs and authorizes a public officer of the state and the courts of the state

871 to impair the obligation of contracts in violation of section 10 of article I of the Constitution of the United States and of section 16 of article I of the Constitution of the state of California.

III.

872 Section 1011 of said Insurance Code, in pursuance and under the authority of which the within proceedings, or some of them, purport to have been and to be taken, is void and unconstitutional in that it takes and authorizes the taking of property without due process of law in violation of section 1 of article XIV of amendments to the Constitution of the United States and of section 13 of article I of the Constitution of the state of California.

IV.

873 Said section 1011 is further void and unconstitutional in that it impairs, and authorizes a public officer of the state and the courts of the state to impair, the obligation of contracts, in violation of section 10 of article I of the Constitution of the United States and of section 16 of article I of the Constitution of the state of California.

V.

Section 1016 of said Insurance Code, in pursuance and under the authority of which the within proceedings, or some of them, purport to have been and to be taken, is void and unconstitutional in that it takes and authorizes the

874 taking of property without due process of law in violation of section 1 of article XIV of amendments to the Constitution of the United States and of section 13 of article I of the Constitution of the state of California.

VI.

875 Said section 1016 is further void and unconstitutional in that it impairs, and authorizes a public officer of the state and the courts of the state to impair, the obligation of contracts, in violation of section 10 of article I of the Constitution of the United States and of section 16 of article I of the Constitution of the state of California.

VII.

876 Section 1017 of said Insurance Code, in pursuance and under the authority of which the within proceedings, or some of them, purport to have been and to be taken, is void and unconstitutional in that it takes and authorizes the taking of property without due process of law in violation of section 1 of article XIV of amendments to the Constitution of the United States and of section 13 of article I of the Constitution of the state of California.

VIII.

Said section 1017 is further void and unconstitutional in that it impairs, and authorizes a public officer of the state and the courts of the state to impair, the obligation of contracts, in

877 violation of section 10 of article I of the Constitution of the United States and of section 16 of article I of the Constitution of the state of California.

IX.

878 Section 1020 of said Insurance Code, in pursuance and under the authority of which the within proceedings, or some of them, purport to have been and to be taken, is void and unconstitutional in that it takes and authorizes the taking of property without due process of law in violation of section 1 of article XIV of amendments to the Constitution of the United States and of section 13 of article I of the Constitution of the state of California.

X.

879 Said section 1020 is further void and unconstitutional in that it impairs, and authorizes a public officer of the state and the courts of the state to impair, the obligation of contracts, in violation of section 10 of article I of the Constitution of the United States and of section 16 of article I of the Constitution of the state of California.

XI.

Section 1021 of said Insurance Code, in pursuance and under the authority of which the within proceedings, or some of them, purport to have been and to be taken, is void and unconstitutional in that it takes and authorizes the

880 taking of property without due process of law in violation of section 1 of article XIV of amendments to the Constitution of the United States and of section 13 of article I of the Constitution of the state of California.

XII.

881 Said section 1021 is further void and unconstitutional in that it impairs, and authorizes a public officer of the state and the courts of the state to impair, the obligation of contracts, in violation of section 10 of article I of the Constitution of the United States and of section 16 of article I of the Constitution of the state of California.

XIII.

882 Section 1037 of said Insurance Code, and each separate subdivision or paragraph thereof, in pursuance and under the authority of which the within proceedings, or some of them, purport to have been and to be taken, is void and unconstitutional in that it takes and authorizes the taking of property without due process of law in violation of section 1 of article XIV of amendments to the Constitution of the United States and of section 13 of article I of the Constitution of the state of California.

XIV.

Said section 1037, and each separate subdivision and paragraph thereof is further void and unconstitutional in that it impairs, and author-

883 izes a public officer of the state and the courts of the state to impair, the obligation of contracts, in violation of section 10 of article I of the Constitution of the United States and of section 16 of article I of the Constitution of the state of California.

XV.

Section 1043 of said Insurance Code, in pursuance and under the authority of which the within proceedings, or some of them, purport to
884 have been and to be taken, is void and unconstitutional in that it takes and authorizes the taking of property without due process of law in violation of section 1 of article XIV of amendments to the Constitution of the United States and of section 13 of article I of the Constitution of the state of California.

XVI.

Said section 1043 is further void and unconstitutional in that it impairs, and authorizes a
885 public officer of the state and the courts of the state to impair, the obligation of contracts, in violation of section 10 of article I of the Constitution of the United States and of section 16 of article I of the Constitution of the state of California.

XVII.

Section 1045 of said Insurance Code, in pursuance and under the authority of which the within proceedings, or some of them, purport to

886 have been and to be taken, is void and unconstitutional in that it takes and authorizes the taking of property without due process of law in violation of section 1 of article XIV of amendments to the Constitution of the United States and of section 13 of article I of the Constitution of the state of California.

XVIII.

887 Said section 1045 is further void and unconstitutional in that it impairs, and authorizes a public officer of the state and the courts of the state to impair, the obligation of contracts, in violation of section 10 of article I of the Constitution of the United States and of section 16 of article I of the Constitution of the state of California.

XIX.

888 Section 1046 of said Insurance Code, in pursuance and under the authority of which the within proceedings, or some of them, purport to have been and to be taken, is void and unconstitutional in that it takes and authorizes the taking of property without due process of law in violation of section 1 of article XIV of amendments to the Constitution of the United States and of section 13 of article I of the Constitution of the state of California.

XX.

Said section 1046 is further void and unconstitutional in that it impairs, and authorizes a

889 public officer of the state and the courts of the state to impair, the obligation of contracts, in violation of section 10 of article I of the Constitution of the United States and of section 16 of article I of the Constitution of the state of California.

XXI:

890 Section 1047 of said Insurance Code, in pursuance and under the authority of which the within proceedings, or some of them, purport to have been and to be taken, is void and unconstitutional in that it takes and authorizes the taking of property without due process of law in violation of section 1 of article XIV of amendments to the Constitution of the United States and of section 13 of article I of the Constitution of the state of California.

XXII:

891 Said section 1047 is further void and unconstitutional in that it impairs, and authorizes a public officer of the state and the courts of the state to impair, the obligation of contracts, in violation of section 10 of article I of the Constitution of the United States and of section 16 of article I of the Constitution of the state of California.

XXIII:

Section 1048 of said Insurance Code, in pursuance and under the authority of which the within proceedings, or some of them, purport to

892 have been and to be taken, is void and unconstitutional in that it takes and authorizes the taking of property without due process of law in violation of section 1 of article XIV of amendments to the Constitution of the United States and of section 13 of article I of the Constitution of the state of California.

XXIV.

Said section 1048 is further void and unconstitutional in that it impairs, and authorizes a
893 public officer of the state and the courts of the state to impair, the obligation of contracts, in violation of section 10 of article I of the Constitution of the United States and of section 16 of article I of the Constitution of the state of California.

XXV.

Section 1049 of said Insurance Code, in pursuance and under the authority of which the within proceedings, or some of them, purport to
894 have been and to be taken, is void and unconstitutional in that it takes and authorizes the taking of property without due process of law in violation of section 1 of article XIV of amendments to the Constitution of the United States and of section 13 of article I of the Constitution of the state of California.

XXVI.

Said section 1049 is further void and unconstitutional in that it impairs, and authorizes a

895 public officer of the state and the courts of the state to impair, the obligation of contracts, in violation of section 10 of article I of the Constitution of the United States and of section 16 of article I of the Constitution of the state of California.

XXVII.

896 Section 1050 of said Insurance Code, in pursuance and under the authority of which the within proceedings, or some of them, purport to have been and to be taken, is void and unconstitutional in that it takes and authorizes the taking of property without due process of law in violation of section 1 of article XIV of amendments to the Constitution of the United States and of section 13 of article I of the Constitution of the state of California.

XXVIII.

897 Said section 1050 is further void and unconstitutional in that it impairs, and authorizes a public officer of the state and the courts of the state to impair, the obligation of contracts, in violation of section 10 of article I of the Constitution of the United States and of section 16 of article I of the Constitution of the state of California.

XXIX.

Section 1051 of said Insurance Code, in pursuance and under the authority of which the within proceedings, or some of them, purport to

898 have been and to be taken, is void and unconstitutional in that it takes and authorizes the taking of property without due process of law in violation of section 1 of article XIV of amendments to the Constitution of the United States and of section 13 of article I of the Constitution of the state of California.

XXX.

Said section 1051 is further void and unconstitutional in that it impairs, and authorizes a
899 public officer of the state and the courts of the state to impair, the obligation of contracts, in violation of section 10 of article I of the Constitution of the United States and of section 16 of article I of the Constitution of the state of California.

XXXI.

Section 1052 of said Insurance Code, in pursuance and under the authority of which the within proceedings, or some of them, purport to
900 have been and to be taken, is void and unconstitutional in that it takes and authorizes the taking of property without due process of law in violation of section 1 of article XIV of amendments to the Constitution of the United States and of section 13 of article I of the Constitution of the state of California.

XXXII.

Said section 1052 is further void and unconstitutional in that it impairs, and authorizes a

901 public officer of the state and the courts of the state to impair, the obligation of contracts, in violation of section 10 of article I of the Constitution of the United States and of section 16 of article I of the Constitution of the state of California.

XXXIII.

Section 1053 of said Insurance Code, in pursuance and under the authority of which the within proceedings, or some of them, purport to
902 have been and to be taken, is void and unconstitutional in that it takes and authorizes the taking of property without due process of law in violation of section 1 of article XIV of amendments to the Constitution of the United States and of section 13 of article I of the Constitution of the state of California.

XXXIV.

Said section 1053 is further void and unconstitutional in that it impairs, and authorizes a
903 public officer of the state and the courts of the state to impair, the obligation of contracts, in violation of section 10 of article I of the Constitution of the United States and of section 16 of article I of the Constitution of the state of California.

XXXV.

Section 1054 of said Insurance Code, in pursuance and under the authority of which the within proceedings, or some of them, purport to

904 have been and to be taken, is void and unconstitutional in that it takes and authorizes the taking of property without due process of law in violation of section 1 of article XIV of amendments to the Constitution of the United States and of section 13 of article I of the Constitution of the state of California.

XXXVI.

905 Said section 1054 is further void and unconstitutional in that it impairs, and authorizes a public officer of the state and the courts of the state to impair, the obligation of contracts, in violation of section 10 of article I of the Constitution of the United States and of section 16 of article I, of the Constitution of the state of California.

XXXVII.

906 Section 1058 of said Insurance Code, in pursuance and under the authority of which the within proceedings, or some of them, purport to have been and to be taken, is void and unconstitutional in that it takes and authorizes the taking of property without due process of law in violation of section 1 of article XIV of amendments to the Constitution of the United States and of section 13 of article I of the Constitution of the state of California.

XXXVIII.

Said section 1058 is further void and unconstitutional in that it impairs, and authorizes a

907 public officer of the state and the courts of the state to impair, the obligation of contracts, in violation of section 10 of article I of the Constitution of the United States and of section 16 of article I of the Constitution of the state of California.

XXXIX.

The proceedings had and taken by the Insurance Commissioner and by the within court herein are void and unconstitutional in that they 908 deny and have denied due process of law to the shareholders of said The Pacific Mutual Life Insurance Company of California, in violation of section 1 of article XIV of amendments to the Constitution of the United States and of section 13 of article I of the Constitution of the state of California.

XL.

Said proceedings hereinabove in paragraph XXXIX referred to are further void and unconstitutional in that they impair and have impaired the obligation of the contracts of said shareholders in violation of section 10 of article I of the Constitution of the United States and of section 16 of article I of the Constitution of the state of California. 909

XLI.

The purported order appointing conservator made and entered herein on July 22, 1936, is void and unconstitutional in that it takes and

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910 authorizes the taking of property without due process of law, in violation of section 1 of article XIV of amendments to the Constitution of the United States and of section 13 of article I of the Constitution of the state of California.

XLII.

911 Said purported order is further void and unconstitutional in that it impairs and authorizes the impairment of the obligation of the contracts of said shareholders, in violation of section 10 of article I of the Constitution of the United States and of section 16 of article I of the Constitution of the state of California.

XLIII.

912 The purported order of liquidation made and entered herein on July 22, 1936, is void and unconstitutional in that it takes and authorizes the taking of property without due process of law, in violation of section 1 of article XIV of amendments to the Constitution of the United States and of section 13 of article I of the Constitution of the state of California.

XLIV.

Said purported order of liquidation is further void and unconstitutional in that it impairs and authorizes the impairment of the obligation of the contracts of said shareholders, in violation of section 10 of article I of the Constitution of the United States and of section 16 of article I of the Constitution of the state of California.

913

XLV.

The purported order permitting, approving and authorizing rehabilitation, sale and transfer of assets and reinsurance plan and agreement of The Pacific Mutual Life Insurance Company of California is void and unconstitutional in that it takes and authorizes the taking of property without due process of law, in violation of section 1 of article XIV of amendments to the constitution of the United States and of section 13 of article I of the Constitution of the state of California.

914

XLVI.

Said purported order hereinbefore in paragraph XLV referred to is further void and unconstitutional in that it impairs and authorizes the impairment of the obligation of the contracts of said shareholders, in violation of section 10 of article I of the Constitution of the United States and of section 16 of article I of the constitution of the state of California.

915

XLVII.

The purported order approving amendment of rehabilitation, sale and transfer of assets and reinsurance agreement made and entered herein on July 23, 1936, is void and unconstitutional in that it takes and authorizes the taking of property without due process of law, in violation of section 1 of article XIV of amendments to the Constitution of the United States and of section

916 13 of article I of the Constitution of the state
of California.

XLVIII.

Said purported order hereinabove in paragraph XLVII referred to is further void and unconstitutional in that it impairs and authorizes the impairment of the obligation of the contracts of said shareholders, in violation of section 10 of article I of the Constitution of the United States and of section 16 of article I of the Con-
917 stitution of the state of California.

XLIX.

The acts and proceedings of said Insurance Commissioner in proposing, agreeing to, executing and procuring the approval of the purported Rehabilitation, Sale and Transfer of Assets and Reinsurance Plan and Agreement referred to in the order to show cause herein were and are, and each of them was and is, void and unconstitutional in that they deprive and have deprived the
918 shareholders of said The Pacific Mutual Life Insurance Company of California of their property without due process of law, in violation of section 1 of article XIV of amendments to the Constitution of the United States and of section 13 of article I of the Constitution of the state of California; and further in that they impair and have impaired the obligation of the contracts of said shareholders in violation of section 10 of article I of the Constitution of the United States

919 and of section 16 of article I of the Constitution of the state of California.

L.

The proceedings had and taken herein were and are void, irregular, arbitrary and without authority in law, in that:

(a) No notice of any of said proceedings, or of the application for, or the making of any of the orders hereinabove referred to was given to any of the shareholders of The Pacific Mutual Life Insurance Company of California;

(b) None of said shareholders was given the right or opportunity to appear and be heard in respect of the action taken and/or proposed to be taken by the said Insurance Commissioner and/or by the within court;

(c) None of said shareholders was given the right or opportunity to appear and be heard in respect of the making, execution and/or approval of said purported Rehabilitation, Sale and Transfer of Assets and Reinsurance Plan and Agreement referred to in the order to show cause herein;

(d) None of said shareholders was given the right or opportunity to secure, attempt to secure, present and/or propose other and different plans or agreements of rehabilitation, reinsurance, sale and transfer of assets or reorganization;

922 (e) The order approving the purported Rehabilitation, Sale and Transfer of Assets and Re-insurance referred to in the order to show cause herein, and the order approving amendment thereto, were and each was made improvidently, without a full or any hearing, without notice or opportunity for hearing to any of the shareholders, and without the presentation and consideration of such independent and impartial appraisals, information and data as would have enabled the court to form a considered and informed judgment upon the merits of said purported plan and agreement;

923 (f) The said Insurance Commissioner, was and is without authority in law to sell, transfer or otherwise dispose of all or substantially all of the assets of said The Pacific Mutual Life Insurance Company of California without the approval and consent of shareholders owning at least a majority of the outstanding capital stock of said company, and without notice and opportunity for a hearing in respect thereof being given the said shareholders;

924 (g) The within court was and is without power or jurisdiction to order or approve, confirm or ratify the sale, transfer or other disposition of all or substantially all of the assets of said company without notice or opportunity for a hearing in respect thereof having been given the shareholders of said company;

925 (h) The said Insurance Commissioner was and is without any authority or power in law to make or execute said purported Rehabilitation, Sale and Transfer of Assets and Reinsurance Plan and Agreement referred to in the order to show cause herein, and the within court was and is without power or jurisdiction to order or approve, confirm or ratify said plan and agreement;

926 (i) The said Insurance Commissioner has no right, power or authority in law to use all or any part of the assets of said The Pacific Mutual Life Insurance Company of California to purchase stock in any other corporation, firm or concern;

927 (j) As the respondent hereby appearing is informed and believes and therefore alleges, said The Pacific Mutual Life Insurance Company of California at the time of any of the proceedings had and taken by said Insurance Commissioner and the within court, was not insolvent or in such condition that its further transaction of business would have been hazardous to its policyholders, or creditors, or to the public; and the finding and determination of said Insurance Commissioner to the contrary were and are arbitrary and capricious and not founded or based on fact;

(k) As respondent hereby appearing is informed and believes and therefore alleges, the

928 finding and determination of said Insurance Commissioner to the effect that he will be unable to restore the business, affairs and property of said The Pacific Mutual Life Insurance Company of California to such a position that it will be able to carry on its business as heretofore, maintain its necessary reserves and discharge in full its obligations to policyholders and others as they mature, that further efforts to proceed under section 1011 of the Insurance Code would be
929 futile and not to the best interests of its policyholders, creditors, stockholders and the public generally, and that the interests of such persons would be best served by granting an order of liquidation, were and are arbitrary and capricious, unfounded in fact and made without any independent or impartial data or information to support them and without any attempt by said Insurance Commissioner to manage, operate or conduct the business and affairs of said company
930 as conservator and without any attempt by such actual operation to determine whether conservation could be effected and liquidation avoided;

(1) The finding of the within court in accordance with the finding and determination of the Insurance Commissioner hereinabove in subdivision (k) referred to, was and is without support in any evidence, data or information before the court;

931 (m) The finding numbered "1" in the Order Permitting, Approving and Authorizing Rehabilitation, etc., was and is without support in any evidence, data or information before the court and is contrary to the facts;

(n) The finding numbered "2" in said order was and is without support in any evidence, data or information before the court and is contrary to the facts;

932 (o) The finding numbered "3" in said order was and is without support in any evidence, data or information before the court and is contrary to the facts;

(p) The finding contained in the Order Approving Amendment of Rehabilitation, Sale and Transfer of Assets and Reinsurance Agreement is without support in any evidence, data, or information before the court and is contrary to the facts;

933 (q) As the respondent hereby appearing is informed and believes and therefore alleges, the within proceedings are but an incident in and a part of a preconceived plan and design on the part of the directors of said The Pacific Mutual Life Insurance Company of California, acting in concert and collaboration with said Insurance Commissioner, to convey and transfer all of the assets of said company to a new corporation for the purposes of eliminating the interest therein of the shareholders of the original company, and

934 of defrauding, hindering, and delaying certain creditors and preferring others.

LI.

Said purported Rehabilitation, Sale and Transfer of Assets and Reinsurance Plan and Agreement referred to in the order to show cause herein and the purported amendment thereof, are unfair and inequitable and in violation of the rights of the shareholders, among others, of said The Pacific Mutual Life Insurance Company of
935 California, in the following particulars, among others, and in each of them, to-wit:

(a) All or substantially all of the assets of the said company (hereinafter referred to as the "Old Company") are transferred to the so-called "New Company", but neither non-cancellable policy holders, creditors nor shareholders participate or are to participate in the realization from any but a small part of said assets;

936 (b) The New Company does not assume all of the liabilities of the Old Company, but it acquires all of the latter's assets;

(c) The purported agreement for restoration of benefits to non-cancellable policy holders is illusory, unfair and inequitable in that: 1. Such restoration is to be made only at such time or times, and in such manner, and to such an extent as may be proposed by the New Company and approved by the Insurance Commissioner, so that the agreement may never be performed and

937 could never be enforced; 2. The fund out of which said restoration, if any, is to be made is unduly limited to the net profits derived by the New Company from that portion of the non-participating branch of its life department represented by non-participating life insurance policies reinsured and assumed, whereas such policyholders, and thereafter the shareholders, should have the benefit of all profits made by the New Company from all assets transferred to, and all
938 insurance reinsured and assumed by, the New Company;

(d) The assets of the Old Company are taken over at their admitted values as of December 31, 1935, whereas said assets are in fact of a value considerably in excess thereof by reason of the conservative appraisal of admitted values, and the general appreciation in values since December 31, 1935. Any realization by reason of such appreciation in excess of admitted values
939 is reserved to the New Company and shareholders do not participate therein or obtain the benefit thereof;

(e) The provision for payments to the Old Company, in which non-cancellable policy holders and thereafter shareholders participate, is unduly limited to payments out of the net profits derived by the New Company from that portion of the non-participating branch of its life insurance policies reinsured and assumed, whereas

940 such policy holders, and thereafter the shareholders, should have at least the benefit of all profits made by the New Company from all assets transferred to, and all insurance reinsured and assumed by, the New Company;

(f) The limited sources to which payments to be made for the benefit of shareholders are limited, are uncertain in nature and may very probably soon cease to exist because of: 1. The lapse and discontinuance of non-participating policies reinsured and assumed by the New Company; 2. The conversion of the reinsured and assumed non-participating policies into participating policies; 3. The limitations on the use, and deductions from, the fund so created by virtue of the provisions requiring establishment of reserves for any depreciation in the assets, and the restoration of certain sums to the surplus of the participating department, and the retention by the New Company of the benefit of reserves freed by a lapsation of non-cancel-
942 lable policies in excess of a lapse rate of ten per cent (10%) per year;

(g) The name, good-will and agency structure of the Old Company are transferred to the New Company, but nothing is paid in respect thereof and there is no provision for participation by the shareholders in the new business acquired or profits made by the New Company as the result of the acquisition and use of these assets;

943 (h) The assumption by the New Company of claims against the Old Company is unfairly and unduly limited to aggregate admitted value of the transferred assets as of December 31, 1935, thereby adopting a low value and depriving the shareholders of the benefit of any appreciation in such value;

(i) The agreement by the Insurance Commissioner as to the manner in which he will vote the stock of the New Company in the future in
944 respect of a proposed voluntary mutualization is contrary to public policy and void;

(j) The purchase price to be paid for the stock of the New Company held by the Insurance Commisisoner in the event of a voluntary mutualization is not devoted, in proper order, for the benefit of the shareholders of the Old Company; on the contrary, any surplus after payment of claims against the Old Company is to be repaid to the New Company;

945 (k) The proposed Plan and Agreement is uncertain, vague and ambiguous in many particulars so that its intent and meaning cannot be determined;

(l) The shareholders, who had no part in the negotiation, drafting or preparation of said Plan and Agreement and who are objecting to its terms and provisions, are nevertheless bound, in the event of any dispute, by the decision of one

946 of the parties to it and apparently without recourse to the courts;

(m) The provision making the agreement a complete and adequate defense to any action by the shareholders, is unfair, contrary to public policy, and destructive of the right to have disputes and controversies thereunder and rights affected thereby adjudicated by the courts.

947 (n) The provision for the creation of a fund based on the amount of assumed and reinsured non-participating insurance in force at the time of creation is illusory and unfair in that there is no limitation on the time within which the fund may be created, and the basis upon which the amount of said fund is to be computed may never exist because of the lapse and discontinuance and maturity of non-participating policies and their conversion into participating policies either by agreement with the individual policy holders or by voluntary mutualization;

948 (o) The consideration agreed to be paid by the New Company to the Old Company for the latter's assets is grossly inadequate and less than the fair value of said assets.

Wherefore, respondent hereby appearing respectfully prays, on his behalf and on behalf of all persons similarly situated, that all proceedings heretofore had herein be vacated and set aside, that said purported Plan and Agreement

949 be not approved, confirmed or ratified, or that in the alternative, said Plan and Agreement be amended and modified so as to make it fair and equitable, and for such other and further relief as to the court may seem proper.

LOEB, WALKER AND LOEB,

By HERMAN F. SELVIN,

Attorneys for Harold S. Cook.

State of California, County of Los Angeles—ss.

950 Harold S. Cook being by me first duly sworn, deposes and says: that he is the respondent appearing by the foregoing return & answer in the above entitled action; that he has read the foregoing return & answer and knows the contents thereof; and that the same is true of . . . own knowledge, except as to the matters which are therein stated upon information or belief, and as to those matters that he believes it to be true.

HAROLD S. COOK.

951

Subscribed and sworn to before me this 10th day of August, 1936.

[Seal]

LAURA LINDSAY.

Notary Public in and for the County of Los Angeles, State of California.

Endorsed: Filed Aug. 10, 1936. L. E. Lampton, county clerk; by A. G. Stanham, deputy.

952 [TITLE OF COURT AND CAUSE.]

Petition for Intervention.

Comes now R. Rabinowitz, and for his petition in intervention alleges:

I.

That intervenor is and at all times herein mentioned has been the holder and owner of the following policies of insurance heretofore issued by respondent herein, to-wit:

- 953
1. Policy No. 4641785 (Noncancellable Disability Policy) issued September 14, 1923.
 2. Policy No. 4643430 (Noncancellable Disability Policy) issued November 19, 1923.
 3. Policy No. 4670940 (Noncancellable Disability Policy) issued July 8, 1926.
 4. Policy No. 384061 (Life Insurance with disability provisions) issued March 26, 1928.

II.

- 954 That on July 22, 1936, each of said policies of insurance hereinabove described was in good standing.

III.

That prior to July 22, 1936, intervenor became ill and as a result of such illness did suffer such disability as to entitle him to compensation under and pursuant to the terms and provisions of said policies of insurance and each of them. That said illness and disability of your intervenor did commence prior to the 22nd day of July, 1936,

955 and at all times since the inception thereof did continue to exist and does now exist.

IV.

That paragraph 10 of the "Rehabilitation, Sale and Transfer of Assets and Reinsurance Plan and Agreement Concerning The Pacific Mutual Life Insurance Company of California" (hereinafter referred to as the "Rehabilitation Agreement") and the amendment thereto provides:

956 "The New Company shall be obligated to continue the payment of all disability benefits under Non-Can Policies, claims or notices of claims for which had been filed with the Old Company prior to the date of liquidation, and all payments under settlement agreements made by the Old Company with claimants under such policies, without any deduction or limitation whatsoever, but subject to all of the terms and provisions of such Non-Can Policies, and subject to any such settlement agreements; and subject, further, to
957 any and all defenses, offsets, counter-claims, cross-complaints, and rescission rights against any such claim or claims, which would have been available to the Old Company had this agreement not been made."

V.

That while no formal written claim or formal written notice of claim was filed with respondent by assured himself before July 22, 1936, the illness and disability of intervenor, as above described, did occur prior to said date and

958 your intervenor's right to compensation under
and pursuant to the terms and provisions of said
policies and each of them did accrue, arise and
mature prior to said date.

VI.

Your intervenor avers that said "Rehabilita-
tion Agreement" is unjust, unfair, inequitable
and discriminatory in providing that the New
Company shall be obligated to continue the pay-
ment of disability benefits, under non-cancellable
959 policies, only when claim or notice of claim was
filed thereon prior to July 22, 1936, and in fail-
ing to provide that the New Company should
likewise be obligated to make payment in full of
all disability benefits under non-cancellable pol-
icies where the illness and disability of the as-
sured did commence prior to said date and where
the right to compensation under and pursuant
to the terms and provisions of such policies did
arise and become vested prior to said date.

960

VII.

That in so discriminating against the holders
of policies of insurance whereunder the right to
compensation did arise, become vested and ma-
ture prior to July 22, 1936, said "Rehabilitation
Agreement" and the order of the above entitled
court confirming the same under date of July
22, 1936, are and each is in violation of the
Fourteenth Amendment of the Constitution of
the United States and of section 13 of the Con-
stitution of the State of California.

961

VIII.

Your intervenor does file this petition for and on behalf of himself and all other holders of policies of insurance issued by respondent under and pursuant to the terms of which such persons did become entitled to the compensation and payments therein provided and who did not, prior to July 22, 1936, file claim or notices of claim with respondent.

Wherefore, your intervenor prays:

962

1. That this court grant to your intervenor leave to intervene herein as a party defendant and to file herein this his said petition;

2. That this court make its order disapproving paragraph 10 of the "Rehabilitation Agreement" and requiring that said paragraph 10 be revised so as to require and obligate the New Company to pay and continue to pay all disability benefits under all non-cancellable policies where the assured therein did become ill and

963

disabled prior to July 22, 1936, in such manner as to be entitled to compensation and payment thereunder regardless of whether claim or notice of claim for such compensation was filed with respondent prior to July 22, 1936.

R. RABINOWITZ,

By LAWLER & FELIX,

His Attorneys.

Verified.

Endorsed: Filed Aug. 11, 1936. L. E. Lampton, county clerk; By A. G. Stanham, deputy.

964 In the Superior Court of the state of California, in and for the county of Los Angeles.

Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, petitioner, vs. The Pacific Mutual Life Insurance Company of California, a corporation, respondent. No. 404-673.

Order Appointing Conservator and Restraining Order.

965 "It appearing that on the 22nd day of July, 1936, the petitioner in the above entitled proceeding filed herein an application for an order appointing the Insurance Commissioner of the State of California as conservator of respondent corporation, and for other relief, and that on

[Willis, J.]

said date ~~and pursuant to~~ the appearance and [Willis, J.] were ~~d~~ answer of respondent corporation ~~on~~ file ~~Λ~~

966 herein and its written consent waiving notice [W. J.] ~~d~~

of the time and place of hearing ~~on~~ file ~~Λ~~ herein; and it further appearing that thereafter and under date of July 22, 1936, an "Order Appointing Conservator and Restraining Order" was duly given and made by the Honorable Douglas L. Edmonds, Judge of the above entitled court, which, among other things, by its terms vested title to all of the assets of said respondent where-soever situated in said Commissioner, or his suc-

cessor in office, in his official capacity as such Commissioner, directed said Commissioner forthwith to take possession of all of the books, records, property, real and personal, and assets of said respondent and to conduct, as Conservator, the business of said respondent and enjoined said respondent and its officers, directors, agents, servants and employees from the transaction of the business of said respondent and from the disposition of any of the property of said respondent until the further order of the above entitled court; and

It further appearing that the Honorable Douglas L. Edmonds ~~having~~ [W. J.] advised this court that he is the holder of a life policy in the sum of \$5,000, issued by the respondent, that he has not and does not now consider that said facts disqualifies him in connection with this proceeding; that, nevertheless, it has occurred to him that it may hereafter be asserted that by reason of his ownership of such policy he was and is disqualified herein; and it appearing to this court that it is advisable that this court should re-hear and re-consider the petitioner's application on file herein, and petitioner having presented his said application to this court, and the court being fully advised in the premises,

The court finds that petitioner herein, together with a number of other insurance commissioners of the states in which respondent corpora-

970 tion transacts its business, made a convention examination of the business and affairs of respondent corporation as of December 31, 1935, and in connection therewith petitioner and said other Commissioners have joined in a report of such examination, which said report is petitioner's last report of examination of respondent, and a certified copy of which said report is attached to said application dated July 22, 1936,
971 as Exhibit A thereof; that said application, examination and report, and each of them, shows and the court finds the fact to be that respondent corporation is in such condition that its further transaction of business will be hazardous to its policyholders, its creditors and to the public; that said application, examination and report, and each of them, shows and the court finds the fact to be that the respondent corporation is insolvent
972 within the meaning of Article 13, Chapter 1, Part 2, Division 1 of the Insurance Code of the State of California; that respondent's said hazardous and insolvent condition is principally caused, among other things, by reason of the fact that respondent corporation has for a considerable number of years last past issued a large number of non-cancellable accident and health policies at a premium rate which was and is now

973 entirely inadequate to maintain the reserves required by law to mature said policy obligations,

Now, therefore, it is hereby ordered, adjudged and decreed, as follows:

974 1. That the "Order Appointing Conservator and Restraining Order" made herein by the Honorable Douglas L. Edmonds, under date of July 22, 1936, be and it is hereby ratified, approved and confirmed; and that said order and said restraining order be and they are now hereby adopted and continued in force.

975 2. That Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, be and he is hereby appointed conservator of said respondent corporation, its business, assets and affairs, and that said Commissioner be and he is hereby ordered to take possession forthwith of all the books, records, property, real and personal, and assets, wheresoever situated, of said respondent corporation, and to conduct, manage, transact and operate the business and affairs of respondent as a going insurance business, and to do any and all things which the petitioner may deem necessary and appropriate for that purpose, for the benefit of the policyholders, creditors and stockholders of respondent corporation and the public in general.

976 3. That all the right, title and interest of said
respondent corporation in and to all of its assets
and property, whether real or personal, where-
soever situated, be and they are hereby vested
in petitioner in fee simple; that all persons be
and they are hereby enjoined and restrained
from in any manner interfering with the pos-
session and title of said petitioner in and to said
assets and property, whether real or personal and
977 wheresoever situated; that in the conservation,
management and operation of the assets and
business of respondent corporation, petitioner
deal with its property, assets and business
as such conservator [Willis, J.]
in his own name as Insurance Commissioner of
the State of California; that in such connection
petitioner appoint and employ such agent or
agents, counsel, clerks and assistants as by him
978 may be deemed necessary and fix their compensa-
tion.

4. That the above named respondent corpora-
tion, its officers, directors, agents, servants and
employees be and they hereby are enjoined and
restrained from the transaction of any of the
business of said corporation or from the dispo-
sition of any of its property or assets until the
further order of this court.

979 5. That the above named respondent corporation, its officers, directors, agents, servants and employees, all creditors of said respondent corporation, all claimants against said respondent corporation and all other persons be and they hereby are enjoined and restrained from interfering with the conservation, management, operation or disposal of any of the assets of or the business of respondent corporation or from instituting or prosecuting any action, suit or proceeding or from levying any attachment or execution or other process or selling under or prosecuting any attachment or execution or other process against any property or assets of said respondent corporation, wheresoever situated, without the consent of this court obtained after reasonable notice to petitioner.

981 6. That all officers, directors, agents, servants and employees of respondent corporation be and they hereby are ordered and directed to deliver to petitioner all books, records, fixtures, equipment, money, bills receivable and other property and assets of said respondent corporation, wheresoever situated.

7. That Samuel L. Carpenter, Jr., as conservator of respondent corporation, be and he is hereby authorized and directed to formulate,

982 work out and prepare a rehabilitation and/or re-
insurance plan or agreement concerning respond-
ent corporation which shall be subject to the ap-
proval of this court and which shall in his judg-
ment fairly and equitably protect and adjust the
rights, obligations and liabilities of all persons
concerned herein and which shall provide for the
removal of the causes and conditions which have
made this proceeding necessary; and he is fur-
983 ther authorized and directed to pay from the
assets of respondent corporation all expenses
necessarily incurred.

8. This order does not constitute any revoca-
tion or abrogation of any orders heretofore made
in this proceeding and does not constitute any
ruling or adjudication with respect to the effect
of the ownership of said policy upon the right of
the Honorable Douglas L. Edmonds to sit or act
984 or make any of the orders heretofore made by
him herein.

Done in open court this 11th day of August,
1936.

HENRY M. WILLIS,
Judge of the Superior Court.

Endorsed: Filed Aug. 11, 1936. L. E. Lamp-
ton, county clerk; by A. G. Stanham, deputy.

985 In the Superior Court of the state of California, in and for the county of Los Angeles.

Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, petitioner, vs. The Pacific Mutual Life Insurance Company of California, respondent, Pacific Mutual Life Insurance Company, intervenor, Charles Ross Cooper, Irving H. Granicher, Raymond Vincent Knowles, Harry George Richard, Wilmont P. Rogers, John F. Hassler, Verne Reynolds Pentecost, Donald Vincent Nicholson, Horace Rowan Gaither and Hugh King McKevitt, intervenors. No. 404673.

**Petition in Intervention and Appearance of
Certain Policyholders of the Pacific Mutual Life Insurance Company of California.**

987 Come now Charles Ross Cooper, Irving H. Granicher, Raymond Vincent Knowles, Harry George Richard, Wilmot P. Rogers, John F. Hassler, Verne Reynolds Pentecost, Donald Vincent Nicholson, Horace Rowan Gaither and Hugh King McKevitt, owners and holders of non-cancellable income policies of The Pacific Mutual Life Insurance Company of California, and appear in the above entitled matter and intervene therein, and as and for such appearance

988 and petition in intervention, specify and allege as follows:

1. That said Charles Ross Cooper is the owner and holder of non-cancellable income policy numbered 2659704 issued by The Pacific Mutual Life Insurance Company of California under date of May 29th, 1919;

989 That said Irving H. Granicher is the owner and holder of non-cancellable income policy numbered 5513638 issued by The Pacific Mutual Life Insurance Company of ~~California~~ under date of April 15th, 1928;

That said Raymond Vincent Knowles is the owner and holder of non-cancellable income policy numbered 5513673 issued by The Pacific Mutual Life Insurance Company of California under date of April 15th, 1928;

990 That said Harry George Richard is the owner and holder of non-cancellable income policy numbered 4638108 issued by The Pacific Mutual Life Insurance Company of California under date of May 15th, 1923;

That said Wilmot P. Rogers is the owner and holder of non-cancellable income policy numbered 4666014 issued by The Pacific Mutual Life Insurance Company of California under date of March 10th, 1926;

991 That said John F. Hassler is the owner and holder of non-cancellable income policy numbered 4669018 issued by The Pacific Mutual Life Insurance Company of California under date of May 26th, 1926;

That said Verne Reynolds Pentecost is the owner and holder of the following non-cancellable income policies issued by The Pacific Mutual Life Insurance Company of California; to-wit:
992 numbers 4668070 and 4668071, which policies were issued under date of May 27th, 1926;

That said Donald Vincent Nicholson is the owner and holder of two (2) non-cancellable income policies issued by The Pacific Mutual Life Insurance Company of California in about the year 1923;

That said Horace Rowan Gaither is the owner and holder of non-cancellable income
993 policy numbered 4641112 issued by The Pacific Mutual Life Insurance Company of California under date of August 13th, 1923;

That said Hugh King McKevitt is the owner and holder of non-cancellable income policies, to-wit: numbers 4608452, 4621872, 4623029 and 4623192 issued by The Pacific Mutual Life Insurance Company of California under date of August 30th, 1921;

994 That all of the policies mentioned in this paragraph are in full force and effect.

2. That the plan and agreement of rehabilitation as proposed by the Insurance Commissioner of the State of California in the above entitled matter and the agreement made and executed by said Insurance Commissioner as provided for in said plan and agreement are unjust, unfair and discriminatory against the owners and holders
995 of non-cancellable disability income policies issued by The Pacific Mutual Life Insurance Company of California, including the intervenors mentioned in paragraph 1 hereof, and that said plan and agreement discriminate unfairly and unjustly in favor of all other types of policyholders of said The Pacific Mutual Life Insurance Company of California.

996 3. That said plan and agreement of rehabilitation and the said agreement made and executed by said Insurance Commissioner of the State of California as provided for in said plan and agreement are unjust, unfair and discriminatory in favor of the holders and owners of non-cancellable disability income policies of The Pacific Mutual Life Insurance Company of California who have filed or made claim under said policies prior to July 22nd, 1936, and that said plan and

997 agreement discriminate unfairly and unjustly
against the holders of non-cancellable disability
income policies of The Pacific Mutual Life In-
surance Company of California who have not
filed or made claim prior to July 22nd, 1936.

4. That due, proper and adequate notice as
required by law was not given to the owners
and holders of policies of The Pacific Mutual
Life Insurance Company of California and to
998 all interested parties.

5. That said plan and agreement of rehabili-
tation and the agreement made and executed by
said Insurance Commissioner as provided for in
said plan and agreement are confiscatory.

6. That said plan and agreement of rehabil-
itation and the agreement made and executed by
said Insurance Commissioner as provided for in
said plan and agreement are unfair, inequitable
999 and against the best interests of all policyholders
of The Pacific Mutual Life Insurance Company
of California, and in particular said plan and
agreement of rehabilitation and said agreement so
executed by said Insurance Commissioner of the
State of California are unjust, inequitable, and
against the best interests of the holders of non-
cancellable disability income policies of The Pa-

1000 cific Mutual Life Insurance Company of California.

7. That said plan and agreement of rehabilitation and the said agreement made and executed by the Insurance Commissioner of the State of California discriminate unfairly and unjustly in favor of non-cancellable policyholders of certain premium classes as against non-cancellable policyholders of other premium classes in The
1001 Pacific Mutual Life Insurance Company of California.

8. That the percentage of the original monthly benefits assumed by Pacific Mutual Life Insurance Company, intervenor in the above entitled matters, in the different classes of non-cancellable policyholders is discriminatory and inequitable and without justification.

1002 9. That said plan and agreement of rehabilitation and the said agreement executed by the said Insurance Commissioner are unfair, unjust and inequitable in other and further particulars.

10. That the said Insurance Commissioner of the State of California and the above entitled court acted without jurisdiction or right in the purported sale of the assets of The Pacific

1003 Mutual Life Insurance Company of California to the Pacific Mutual Life Insurance Company.

11. That due and proper notice was not given to all interested parties with reference to said purported sale.

12. That said purported sale was not made in accordance with law.

Wherefore, your said intervenors pray that said plan and agreement of rehabilitation and the said agreement executed by the Insurance Commissioner of the State of California as provided for in said plan and agreement of rehabilitation, be held and adjudicated to be unfair, inequitable and unjust; that the sale of said properties and assets of The Pacific Mutual Life Insurance Company of California to the Pacific Mutual Life Insurance be adjudicated void and of no effect, and for such other and further relief as may be meet and proper in the premises.

HUGH KING McKEVITT,

1005 *Attorney for said Intervenor, Charles Ross Cooper; Irving H. Granicher; Raymond Vincent Knowles; Harry George Richard; Wilmot P. Rogers; John F. Hassler; Verne Reynolds Pentecost; Donald Vincent Nicholson; Horace Rowan Gaither and Hugh King McKevitt.*

Verified.

Endorsed: Filed Aug. 12, 1936, 9:46 a. m.
L. E. Lampton, county clerk; by C. J. Bergquist, deputy.

1006 In the Superior Court of the State of California in and for the County of Los Angeles.

Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, petitioner, vs. The Pacific Mutual Life Insurance Company of California, a corporation, respondent, Andrew J. Copp, Jr., intervenor.

Complaint in Intervention.

1007 Comes now Andrew J. Copp, Jr., and by leave of the court files this his complaint in intervention herein and for cause of action in intervention alleges:

I.

1008 That heretofore, to-wit, on the 22nd day of July, 1936, an action entitled as above was commenced in the above entitled court by Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, as petitioner, against The Pacific Mutual Life Insurance Company of California, a corporation, respondent, for an order appointing petitioner as a conservator of the defendant corporation, for an order to liquidate all of the assets and business of the Pacific Mutual Life Insurance Company of California; a corporation, respondent herein, and for an order permitting, approving and authorizing rehabilitation, sale and transfer of assets and reinsurance plan and agreement of The Pacific Mutual Life Insurance Company of California and for approval of amendment of rehabilitation, sale and

1009 transfer of assets and reinsurance agreement;
that said action has since that time been, and is
now, pending herein; that the trial thereof has
not been had.

II.

At all times in this complaint mentioned the
respondent, The Pacific Mutual Life Insurance
Company of California, a corporation, has been
and now is a corporation duly organized and ex-
isting under and by virtue of the laws of the
1010 state of California and is, and at all of said
times has been, engaged in the business of life
and health and accident insurance in the state
of California under a certificate of authority
issued by the Insurance Commissioner of the
State of California; that said respondent cor-
poration at all said times has had and now has
assets in the state of California and elsewhere
and the office where the respondent corporation's
business is and has been transacted during all of
1011 said times is in the state of California, county of
Los Angeles.

III.

That on or about the 15th day of July, 1922,
and for some time immediately prior thereto
and for some time immediately subsequent there-
to, Maude Ross Ferguson was the duly author-
ized agent of said respondent corporation, duly
authorized by said respondent corporation to
sell life, health and accident insurance of said
respondent corporation and all of the acts, rep-

1012 representations and conduct of said Maude Ross Ferguson as agent for and on behalf of said respondent corporation as hereinafter set forth were within the scope of said agency and were fully authorized by said respondent corporation and binding upon it.

IV.

On or about the said 15th day of July, 1922, the said respondent corporation, by and through its duly authorized agent, Maude Ross Ferguson, approached intervener and offered to sell to him and to cause to be issued by respondent corporation to him certain insurance protection referred to by said respondent corporation and said agent as a "pay five way policy," by the terms of which this intervener and the beneficiaries named by him in said policy would be protected and insured against loss in the event of death of the intervener, for loss of life, limbs, sight and time resulting from bodily injury sustained from accidental means and from loss of time from sickness; that said pay five way policy would be a twenty payment life containing the standard provisions found in policies of that kind, providing (a) for the payment of \$10,000.00 to the beneficiary named therein in the event of the death of intervener; (b) for waiver of premium and a monthly income of \$100.00 upon receipt of proof of total and permanent disability occurring before the age of sixty years; (c) for payment of \$10,000.00 in

1015 one sum for accidental loss of life; (d) for payment of \$200.00 per month for total disability accidentally caused; (e) for payment of \$100.00 per month for partial disability accidentally caused; (f) for payment of \$200.00 per month caused by sickness during the period of total disability; (g) for payment of \$100.00 per month for temporary disability caused by sickness, liability under sub-paragraphs (d) and (f) limited to twelve months and liability under sub-
1016 paragraphs (e) and (g) limited to six months; (h) for payment of \$300.00 per month against disability commencing while the policy would be in force and effect and resulting from bodily injury effected through accidental means and against disability commencing while said policy would be in force and resulting from sickness, such disability in both cases to be such as will result in a continuous, necessary and total loss from all business time; (i) for payment of sums
1017 less than \$300.00 in the event of disability from either accidental cause or from sickness of a lesser degree than permanent total disability; the liability of the respondent corporation under sub-paragraphs (h) and (i) would be non-cancellable and would continue so long as the disability continued without power of the respondent corporation to cancel same or avoid its obligation in respect thereto.

1018

V.

That said respondent corporation, by and through said Maude Ross Ferguson, its duly authorized agent, represented and stated that the said insurance was a pay five way form of insurance which contained all of the features of protection and insurance above enumerated.

VI.

1019

Intervener thereupon, on or about the 15th day of July, 1922, gave his consent to and accepted the said proposition of the respondent corporation, signed and executed his written application therefor on the form prepared by said Maude Ross Ferguson as agent of the respondent corporation, was physically examined by a physician employed for that purpose by said respondent corporation and in all other respects complied with the regulations and requirements of said respondent corporation in so far as they were disclosed to him at the time and in due

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course, shortly after or on or about the 15th day of July, 1922, said respondent corporation duly issued insurance substantially in accordance with the representation theretofore made by said respondent corporation by and through its duly authorized agent, Maude Ross Ferguson, as hereinabove set forth, and the insurance so issued was in compliance with intervener's application therefor and in conformity with the said respondent corporation's said offer but was set up in separate and several written contracts relating

1021 however to the same matter between the same
parties and made as parts of substantially one
transaction and delivered to intervener together
and at the same time and as part of the same
transaction and intervener therefore alleges that
the said several contracts comprising the insur-
ance so sold and issued to him by said respond-
ent corporation were and are to be taken to-
gether as but one entire and indivisible contract.
One of said written contracts is numbered
1022 464140 and is designated "Non-Participating,
20 Payment Life. Premiums Payable for 20
Years, or Until Prior Death. Permanent Total
Disability Benefit. Form 5172. 1-21." At-
tached to this policy was an accident and sick-
ness benefits policy providing benefits for loss
of life, limbs, sight, time resulting from bodily
injury sustained through accidental means and
from loss of time from sickness. A copy of
which is attached hereto, made part hereof and
marked "Exhibit A." The other of said policies
1023 was numbered 4633015 and was designated
"Non-cancellable Income Policy. Form A292.
Renewable through age sixty. This policy pro-
vides indemnity for loss of time through acci-
dental means, and for loss of time by sickness;
to the extent herein provided." A copy of which
policy is attached hereto, made a part hereof and
marked "Exhibit B."

VII.

At the time this intervener consented to and
accepted the said proposition and accepted the

1024 said policies of insurance and at all times thereafter he relied upon the promises and covenants of said respondent corporation to furnish him the protection and insurance therein provided for a continuous period so long as he should keep and maintain the said policies in full force, effect and virtue by paying the premiums thereon as therein specified and otherwise conforming to the conditions and covenants thereof on his part to be performed and at all said times inter-

1025 vener regarded the said insurance as a whole in what was commonly known and represented as a pay five way policy and relied upon each and every form and item of protection and insurance provided in said Exhibits A and B as a whole and as an indivisible entire contract and not otherwise and the principal consideration to him for accepting and consenting to said offer and accepting said insurance policies and paying the premiums thereon as hereinafter alleged was the entirety of said contract of insurance and

1026 the inclusion therein of all of the forms of protection therein provided and not otherwise and this intervener would not have accepted or consented to said offer or accepted said insurance or paid any of the premiums thereon if any portion of said protection insurance provided thereby had been omitted and particularly if he had known or suspected that the respondent corporation would cancel or endeavor to cancel the non-cancellable income policy No. 4633015, a

1027 copy of which is attached hereto and marked
"Exhibit B", before the expiration thereof ac-
cording to its own terms.

VIII.

On and after the 15th day of July, 1922, this
intervener paid each and every installment of
premium on all of said insurance and on each
of said policies comprising the *the* same, strictly
in accordance therewith and in that behalf has
paid in the aggregate as premiums the sum of
1028 seven thousand three hundred sixty-two and
50/100 dollars (\$7,362.50), no part of which
sum has ever been repaid to intervener and said
policies are, and each of them is, in full force,
effect and virtue.

IX.

On the 26th day of July, 1936, a premium of
\$87.00 became due and payable from intervener
to said respondent corporation pursuant to the
provisions of said policy No. 4633015, a copy of
1029 which is attached to this complaint in interven-
tion and marked "Exhibit B", and thereafter
and on the 4th day of August, 1936, while said
policy was in full force, effect and virtue, inter-
vener tendered to said respondent corporation
and to Pacific Mutual Life Insurance Company,
a corporation, its purported successor-in-interest
in respect to said insurance and to its and their
duly authorized agent the amount of said pre-
mium, to-wit, the sum of \$87.00 conditioned
upon said premium being applied upon the said

1030 insurance of this intervener according to the terms and conditions thereof, which tender was then and there refused by said respondent corporation and said Pacific Mutual Life Insurance Company, a corporation, and by its and their duly authorized agent, with the explanation that said non-cancellable income policy No. 4633019 had been modified without previous notice to or consent of this intervener by a reduction of all benefits thereunder of sixty-five per cent thereof and the tender of \$87.00 as premium on said policy would be accepted only and solely upon the condition that intervener would consent to said modification and sixty-five per cent reduction in benefits under said policy.

X.

1032 Intervener alleges the fact to be that the said rejection of said tender and imposition of said arbitrary conditions and the attempted modification of said non-cancellable policy as above alleged were, and each of them was, wrongful and without the consent of intervener and not binding upon him and intervener does hereby tender into court and continues his tender to respondent corporation or to its successor in interest as insurer under said several policies held by intervener, the said sum of \$87.00 and alleges that he is ready, willing and able to pay the said sum upon said insurance according to the terms thereof.

1033

XI.

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By the reorganization and rehabilitation plan and agreement of petitioner and respondent corporation herein, a copy of which plan is attached to the petition of Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, herein for order permitting, approving and authorizing rehabilitation, sale and transfer of assets and reinsurance plan and agreement of the Pacific Mutual Life Insurance Company, and is made a part thereof and marked "Exhibit A", it is proposed that all of the properties and assets formerly owned by the respondent corporation, hereinafter referred to as the Old Company, and held by petitioner as liquidator of said Old Company, will be transferred and conveyed to the newly organized and incorporated company known as Pacific Mutual Life Insurance Company, hereinafter referred to as the New Company, with the exception of the stock of the New Company and certain claims reserved to the Commissioner as liquidator as more fully set forth in said plan and agreement and under said plan and agreement the policy holders of the Old Company will be given the following rights:

(a) All policyholders (other than holders of any form of noncancelable income policies hereinafter referred to as "non-can policies") will be entitled either (1) to accept the assumption

1036 and reinsurance by the New Company of their existing policies or (2) to file a claim with the Commissioner as liquidator of the Old Company;

(b) The holders of non-can policies will be entitled either (1) to file a claim with the Commissioner as liquidator of the Old Company, or (2) to accept the assumption and reinsurance by the New Company of their existing policies on the reduced basis provided in the agreement **1037** hereinafter set forth.

The New Company will assume and agree to pay the following:

(a) All expenses of the administration of the Commissioner as conservator and liquidator of the Old Company, including such attorneys' fees as may be fixed by the Attorney General of the state of California and approved by the court in the conservation and liquidation proceeding;

(b) Unpaid taxes, wages, salaries and current operating bills of the Old Company; **1038**

(c) All claims filed with the Commissioner as liquidator of the Old Company and finally allowed by the Commissioner and/or by the court;

(d) All policy claims of whatever character (except claims on non-can policies), whether filed, or whether notice of which was filed, prior or subsequent to the order of liquidation; subject, however, to any and all defenses thereto

1039 which would have been available to the Old Company;

(e) Only such claims on noncan policies, as were filed, or notice of which was filed with the Old Company prior to the order of liquidation: subject, however, to any and all defenses thereto which would have been available to the Old Company;

1040 Provided, however, that the obligation of the New Company with respect to items (a), (b) and (c) shall be limited to the value of the properties and assets of the Old Company transferred to the New Company pursuant to the agreement hereinafter set forth less the reserves established by the New Company with respect to policies and policy claims of the Old Company assumed and/or reinsured by the New Company.

XII.

1041 This intervener has been informed and believes and upon such information and belief alleges the fact to be that the new corporation was incorporated only and solely for the purpose of acquiring all of the assets and properties of said old corporation including its insurance business, life, health and accident, except the obligations of the Old Company under the so-called non-cancellable policies, so that there would be no interruption in the transaction of the business occurring at the time of such transfer and the new company was designed to be, and was in

1042 fact, but a continuation of the Old Company by
merely a change of name and it is proposed that
the New Company shall carry on the same business
excepting in respect to the non-cancellable
policies, and to the modified extent as in said
plan and agreement specified, with the same officers
and directors as of the Old Company, in the same
location, with the same furniture, files and personnel,
in the same manner and to the same extent and with
like forms, the New Company assuming all of the debts
and obligations of the Old Company saving and excepting
only the obligations under the so-called non-cancellable
policies. By such transfer and continuation of the
business of the old corporation by the new corporation
under the circumstances hereinabove alleged and as
more fully explained in other pleadings on file herein,
the identity of the old corporation is not destroyed
nor are its legal obligations obliterated by the mere
fact of reincorporation under the different name and
a transfer of its assets from the old to the new corporation.
And intervenor further alleges the fact to be that
the frankly disclosed and unconcealed purpose of such
reincorporation and transfer of assets is to commit a
fraud upon the holders of the non-cancellable policies
in attempting to place beyond the reach of said non-
cancellable policy holders the assets of said old corporation,
and the principal and only purpose of such transfer
of assets is to hinder, delay and defraud the owners
and holders of said non-cancellable poli-

1045 cies and in particular this intervener as the owner and holder of such a policy, numbered 4633015, a copy of which is attached hereto, made a part hereof and marked "Exhibit B", as creditors of said old corporation under said non-cancellable policies.

XIII.

If said rehabilitation and reorganization plan and agreement shall be carried into execution with the approval of the above entitled court and
1046 the same shall be binding upon this intervener, the legal effect will then be that the old corporation will have transferred to the new corporation all portions of the said insurance held by this intervener and hereinbefore described and contained in said Exhibits A and B attached hereto and made a part hereof, that are beneficial and profitable to said old and new corporations and said corporations will be relieved of the burdens and obligations of said insurance
1047 contracts with this intervener that are deemed to be unprofitable and onerous to said new and old corporations and this intervener, as the owner and holder of said policies, is entitled to rely upon them unimpaired and without loss of right to enforce the same against all of the assets and properties and resources of the old and new corporations.

XIV.

If said reorganization and rehabilitation plan and agreement is put into execution then this

1048 intervener, as the owner and holder of said non-cancellable policies will have no valid or enforceable agreement against the assets and properties of said old corporation and will have no valid or enforceable agreement thereunder against the new corporation or its newly acquired assets and will have no plain, speedy or adequate remedy at law.

XV.

1049 If said reorganization and rehabilitation plan and agreement is put into execution the obligation of said insurance contracts will be impaired in violation of article I, section 10, clause 1 of the Constitution of the United States and in violation of the provisions of article I, section 16 of the Constitution of the state of California.

XVI.

1050 If said rehabilitation and reorganization plan and agreement shall be carried into execution this intervener will be deprived of property without due process of law in violation of section 1 of the fourteenth amendment of the Constitution of the United States and in violation of the provisions of article I, Section 13 of the Constitution of the state of California.

Wherefore, this intervener prays for judgment:

1. That it be adjudged and decreed that said policies of insurance issued by said respondent corporation and held by this intervener are in

1051 full force, effect and virtue and subsisting contracts of insurance according to their terms and binding upon and enforceable according to their terms both against the old and new corporations.

2. That it be adjudged and decreed that the new corporation has the same identity as the old corporation and has acquired the assets and properties of the old corporation subject to all of the obligations and liabilities of the old corporation particularly in respect to the non-cancellable
1052 policy held by this intervener, without impairment to the obligation of that contract in any respect.

3: That it be adjudged and decreed that that portion of the said reorganization and rehabilitation plan and agreement is a fraudulent conveyance and transfer and void as to this intervener as a creditor of said old corporation.

4. That the above entitled court revoke its order approving said rehabilitation and reorganization plan and agreement and the order approving the amendment thereto.
1053

5. That said intervener herein have judgment against the petitioner and respondent corporation and Pacific Mutual Life Insurance Company, a corporation, intervener herein, for such other and further relief as may be deemed suitable in equity and for costs of suit.

ANDREW J. COPP, JR.,

Intervener, In Propria Personam.

1054

EXHIBIT "A"

Founded 1868

THE PACIFIC MUTUAL LIFE

INSURANCE COMPANY OF CALIFORNIA

(Capital fully paid \$1,500,000.00)

Number 464140

Amount \$10,000

1055

In Consideration of the application for this Policy, a copy of which is attached hereto and made a part hereof, and of the payment in advance of the Semi-annual premium of One Hundred Eighty and 50/100 Dollars, and the payment of a like premium on the Fifteenth day of April and October in each year during the continuance of this Policy until premiums shall have been paid for twenty entire years, or until the prior death of the Insured:

1056

Promises to Pay, at the Home Office of the Company in the City of Los Angeles, on receipt at said Home Office of due proof of the death of Andrew James Copp, Jr., herein called the Insured, Ten Thousand Dollars less any indebtedness hereon to the Company and any unpaid portion of the premium for the then current policy year, to Cora Lord Copp, Wife of the Insured, or in the event that she shall die before the Insured, to Andrew James Copp, III, and Jane Pendexter Copp, Children of the Insured, equally or to the survivor, Beneficiary.

1057 Permanent Total Disability Benefit

Should the Insured, before attaining the age of sixty years and while this Policy is in full force and no premium thereon in default, become so disabled as to be totally and permanently unable to perform any work or engage in any occupation or profession for wages, compensation or profit, or suffer the irrevocable loss of the entire sight of both eyes, or the use of both hands or feet, or of one hand and one foot, the

1058 Company will waive the payment of future premiums and pay the Insured One Hundred Dollars immediately on receipt of due proof of such disability or loss and a like sum on the first day of each month thereafter as long as the Insured shall live, and such waiver of premiums and payments to the Insured shall not affect any other benefits of values granted under the conditions of the Policy, provided, however, as follows:

1059 Should the Insured at any time thereafter, when required by the Company, (such requirement, however, not to be exacted more frequently than once a year,) be unable to furnish due proof of the continuance of his right to the foregoing benefits, the Company will discontinue the same and require the payment of any premiums which may thereafter become due under the conditions of the Policy, but no reimbursement shall be required for any premiums waived or monthly payments made.

1060 Should the Insured, in time of war, engage in any military or naval service, this Benefit shall thereby be made void.

Should the Insured, before attaining the age of sixty years, elect to have this Benefit cancelled, a reduction in the annual premium of twenty-five cents for each Ten Dollar unit of monthly payment hereunder will thereafter be made.

1061 The first year's insurance under this Policy is term insurance.

The contents of the succeeding pages of this Policy and the benefits, conditions and values set forth thereon are made a part hereof.

1062 In Witness Whereof, The Pacific Mutual Life Insurance Company of California has, by its proper officers, signed this Contract, at the City of Los Angeles, as of the Fifteenth day of October, 1922.

J. E. MILLER

Assistant Secretary

GEORGE J. COCHRAN

President

Examined F. E.

Non-Participating, 20 Payment Life. Premiums Payable for 20 Years, or Until Prior Death. Permanent Total Disability Benefit. Form 5172.
1-21.

1063

Change of Beneficiary

The Insured, with the assent of the Assignee when there is an existing assignment, made as herein provided, other than an assignment to the Company as collateral security for a policy loan, may, while this Policy is in force, designate a new Beneficiary, reserving the right of revocation, by filing written notice thereof at the Home Office of the Company, accompanied by 1064 this Policy for endorsement. Such change shall take effect on the endorsement of the same on this Policy by the Company and not before. Should there be no Beneficiary living at the time this Policy becomes a claim by death, the proceeds hereof shall be paid to the Executors, Administrators or Assigns of the Insured.

Life Income Benefit at Age Sixty-five

1065

On the anniversary date of this Policy nearest the sixty-fifth birthday of the Insured, if this Policy is then in full force and effect and free from indebtedness to the Company, the Insured may surrender this Policy for a fully paid contract providing for the payment to the Insured of a monthly income of \$63.20.

The first monthly income payment shall be made on the anniversary date of this Policy nearest to the sixty-fifth birthday of the In-

1066 sured and subsequent payments shall be made on the first day of each month thereafter as long as the Insured shall live.

Cash Loan and Non-Forfeiture Benefits

Cash At any time after three full years' Loans premiums have been paid, and while this Policy is in full force and effect, the Company will advance to the Insured, on the proper assignment of the Policy and on the sole security thereof, the whole or any part of 1067 the cash surrender value available at the end of the policy year in which application for the loan is made; provided that from such loan interest thereon to the end of the then current policy year, together with any indebtedness hereon to the Company and any unpaid portion of the premium for the current policy year, shall first be deducted.

1068 Interest on the loan shall be at the rate of six per centum per annum, payable in advance on each anniversary date of the Policy. If interest is not paid when due, it shall be added to the principal and bear interest at the same rate. Failure to repay the loan or to pay interest thereon shall not avoid this Policy unless the total indebtedness hereon to the Company shall exceed the cash surrender value at the time of such failure, nor until thirty-one days after notice of such fact shall have been mailed by the Company to the last known address of the In-

1069 sured, and of the Assignee of record, if any, at the Home Office of the Company, The Company reserves the right to defer the granting of loans for a period not exceeding sixty days after application therefor is made, unless such loans are to be used to pay premiums on this Policy.

Non-Forfeiture After this Policy shall have been in force three full years, the Insured may elect within three months after default in payment of premiums, but not later, any of the following options;

1070

Option 1—Cash Surrender Value. Surrender this Policy to the Company at its Home Office for its cash value; or

Option 2—Paid-Up Life Insurance. Have this Policy endorsed by the Company for a reduced amount of paid-up life insurance, payable at the same time and on the same conditions as this Policy; or

1071

Option 3—Paid-Up Term Insurance. Have the insurance for the face amount of this Policy less any indebtedness hereon to the Company, continued in force from date of default for such term as is hereinafter provided, but without the right to loans.

1072	End of Year	Cash Loan Value or Cash Surrender Value	Paid-Up Life Insurance	Paid-Up Term Insurance	
				Years	Days
	3	\$ 510	\$1120	4	295
	4	780	1670	7	11
	5	1060	2220	9	5
	6	1340	2760	10	273
	7	1640	3290	12	90
	8	1950	3830	13	195
	9	2260	4350	14	237
1073	10	2590	4870	15	225
	11	2920	5380	16	173
	12	3270	5890	17	90
	13	3620	6400	17	354
	14	3990	6900	18	251
	15	4370	7410	19	158
	16	4770	7920	20	95
	17	5180	8420	21	86
	18	5610	8940	22	179
	19	6050	9460	24	150
1074	20	6520	Fully Paid		E

The cash surrender value shall be equal to the entire reserve on the face amount of this Policy, computed according to the American Experience Mortality Table and interest at the rate of three and one-half per centum per annum. Any indebtedness hereon to the Company shall be deducted from the cash surrender value.

1075 The amount of the paid-up life insurance or the term of the paid-up term insurance shall be such as the amount of the cash surrender value, reduced by the amount of any indebtedness hereon to the Company, will purchase, applied as the net single premium at the attained age of the Insured based on the American Experience Mortality Table and interest at the rate of three and one-half per centum per annum.

1076 The Company reserves the right to defer the granting of a cash surrender value for a period not exceeding sixty days after application therefor is made. If the Insured shall not, within Automatic three months from default, surrender this Policy to the Company at the Home Office for its cash surrender value, as provided in Option 1, or for endorsement as paid-up life insurance as provided in Option 2, the insurance will be automatically continued as provided in Option 3.

1077 Table of Values The values in the table, computed as hereinbefore provided, are guaranteed on the conditions that the Policy shall have been in force and the premiums paid in full to the end of the year stated, and that there shall be no indebtedness hereon to the Company. Due allowance will be made in computing values for any quarter-annual or semi-annual premium payments which may have been made in addition to the premiums for the full number of years indicated.

1078 The cash loan values provided for in the table for the end of policy years can be obtained during such policy years, as set forth in the paragraph marginally headed "Cash Loans."

Values for later years shall be computed as provided in the paragraph marginally headed "Non-Forfeiture." Such values will be furnished on request.

General Conditions.

1079 Incontest- This policy and the application ability herefor constitute the entire contract between the parties hereto and shall be incontestable after one year, except for non-payment of premium or for violation of the conditions of the Policy relating to military or naval service in time of war.

State- All statements made by the insured ments shall, in the absence of fraud, be deemed representations and not warranties, and 1080 no such statement shall avoid this Policy, unless it is contained in the written application herefor, a copy of which is attached hereto and made a part hereof.

Age If the age of the Insured has been misstated, the amount payable hereunder shall be such as the premium paid would have purchased at the correct age.

Payment of All premiums on this Policy are Premiums due and payable in advance at the Home Office of the Company, but

- 1081 may be paid to the agents of the Company producing receipts signed by the President, a Vice-President, the Secretary or an Assistant Secretary, and countersigned by such agents. The mode of premium payment will be changed by the Company, upon request from annual to semi-annual or quarter-annual or vice versa at the premium rates in use by the Company at the date hereof, but a semi-annual or quarter-annual payment shall not have the effect to continue
- 1082 this Policy in force longer than for the six months or three months covered by such payment, subject to the provisions herein relating to grace. If this Policy become a claim by death, the Company shall have the right to deduct any part or parts of the policy year's premium unpaid. If any premium be not paid when due, or within the grace of thirty-one days, the only liability of the Company under this Policy, if any, shall be such as set forth in the paragraphs
- 1083 marginally headed "Non-Forfeiture" and "Automatic Non-Forfeiture."

5172. 1-21. P. 2.

Grace — A grace of thirty-one days shall be granted for the payment of every premium after the first, during which time the insurance hereunder shall continue in force. If death occur within said grace period, the unpaid premium or portion thereof for the then current policy year shall be deducted from the amount payable hereunder.

1084 General Conditions—Continued

Non-Participation This Policy, including all the
Restoration benefits and values obtaining here-
under, shall not participate in the
surplus earnings of the Company.

After any default in payment of premium this Policy, if not surrendered to the Company, may be restored to full force and effect at any time within five years from the date of such default on written application by the Insured to the
1085 Home Office of the Company and the payment of premiums to date of restoration with interest thereon at the rate of six per centum per annum, provided the Insured shall with such application submit evidence of insurability satisfactory to the Company.

Agents In-debtedness Agents are not authorized to make, alter or discharge contracts.

In making any payment or settle-
ment under this Policy, except under the Perma-
1086 nent Total Disability Benefit, any indebtedness to the Company hereon shall first be deducted.

Assignment Any assignment of this Policy must be made in writing. The Company shall not be deemed to have knowledge of any assignment unless the original or a duplicate thereof is filed at the Home Office of the Company and its receipt duly acknowledged. The Company will not assume responsibility for the validity of any assignment.

- 1087 **Military or Naval Service** If within five years from the date of this Policy the Insured shall engage in any military or naval service in time of war, the liability of the Company in event of the death of the Insured while so engaged, or as a result thereof within six months thereafter but within the period of the war, will be limited to the return of the premiums paid hereon, exclusive of any extra premium paid for military or naval service, less any indebtedness to the Company hereon; unless before engaging in such service or within thirty-one days thereafter, or at the time of paying the first premium due hereon, if the Insured shall be then so engaged, the Insured shall pay to the Company at its Home Office in the City of Los Angeles such extra premium as may be required by the Company, and in like manner shall pay annually thereafter on each anniversary of this Policy or within thirty-one days; while the Insured shall continue to be so engaged, such extra premium as may be required by the Company.
- 1088
- 1089 The foregoing requirements shall not be construed as inoperative should the Policy be in force under an automatic or other non-forfeiture provision.

Within one year after the termination of the war the Company will return such portion of the extra premiums as in its judgment will not be required to cover the extra hazard.

1090 If at any time after the date of this Policy the Insured shall engage in any military or naval service in time of war, the Permanent Total Disability Benefit of this Policy shall thereby be made void, regardless of the payment of extra premiums to the Company, as hereinbefore provided. In the event of such voidance, on written request any unearned permanent total disability premium will be refunded to the Insured and a reduction in the annual premium of twenty-five

1091 cents for each Ten Dollar unit of Permanent Total Disability Benefit will thereafter be made.

Suicide Should the Insured within one year from the date of this Policy commit suicide, sane or insane, the only liability under this Policy shall be for an amount equal to the premiums paid hereon.

Settlement Options.

1092 The insured may elect to have the death benefit under this Policy, or any portion thereof, paid in accordance with the following settlement options, and may subsequently change or revoke such election;

im-
Option 1. Retained by the Company, / proved with compound interest at the rate of three and one-half per centum per annum and, together with the accrued interest thereon, paid at such time as agreed on with the Company in the election of this option;

1093 Option 2. Retained by the Company, interest at the rate of three and one-half per centum per annum to be paid thereon monthly, quarter-annually, semi-annually or annually, and the amount so retained, with any unpaid accrued interest thereon, to be paid at such time as agreed on with the Company in the election of this option;

1094 Option 3. Retained by the Company and instalments of an amount designated by the Insured to be paid monthly, quarter-annually, semi-annually or annually, until the amount retained shall be exhausted, the unpaid portion of the death benefit, while so retained, to be improved with interest at the rate of three and one-half per centum per annum;

Option 4. Paid in monthly instalments certain, in accordance with Table A;

1095 Option 5. Paid in continuous monthly instalments (120 or 240 instalments certain and for life of the Beneficiary thereafter), in accordance with Table B. The amount of each instalment shall be determined by the age at last birthday of the Beneficiary, such age to be computed as of the date when the first instalment shall become payable, the Beneficiary to then submit evidence of age satisfactory to the Company.

Should more than one Beneficiary be entitled to payment under this option when the first instalment becomes due, the portion of the death

1096 benefit then accruing to each of such Beneficiaries shall be applied separately to the purchase of the instalments, the amount thereof to be determined in the manner set forth in the paragraph immediately preceding.

This option shall not be available if the Beneficiary shall be a partnership, a company or a corporation.

1097 *Ech* election, change or revocation of an election shall be made by the Insured in writing and shall take effect on the endorsement thereof on this Policy by the Company.

These settlement options shall be *avilable* to the Beneficiary at the time this Policy becomes a claim by death, if no election; made by the Insured, shall be then operative.

1098 Unless the Insured shall assent thereto, by filing written notice thereof at the Home office of the Company, accompanied by this Policy for endorsement thereon, the Beneficiary shall not have the right to modify or change an election made by the Insured, nor to assign any payments to be made to the Beneficiary thereunder.

Under any election hereunder, the Policy shall be surrendered to the Company when the death benefit becomes payable and a contract issued providing for payment in accordance with such election:

1099 In lieu of the payment of monthly instalments, in accordance with Options 4 or 5, an election for the equivalent thereof in quarter-annual, semi-annual or annual payments may be made. To Obtain the amount of each of such payments, multiply the amount of the monthly instalment shown in Table A or B by 2.991 for quarter-annual, 5.957 for semi-annual or 11.812 for annual payments.

1100 The payment of the first instalment under Option 3, 4, or 5 shall be made immediately on receipt of due proof of the death of the Insured, and of subsequent instalments on the first day of each month, quarter-annually, semi-annually or annually thereafter, in accordance with the election made.

An election under Option 2, 3, 4 or 5 shall be inoperative should the amount of the death benefit otherwise available, be not sufficient for the payment of interest or instalments of at least \$5.00 monthly, \$15.00 quarter-annually, \$25.00 semi-annually or \$40.00 annually.

Should the death benefit become payable, in accordance with an election hereunder, to a single Beneficiary, but such Beneficiary die before the completion of all payments due, the total amount then retained by the Company, under Option 1,

1102 2 or 3, or the value of the then unpaid instalments certain under Option 4 or 5, commuted at the rate of three and one-half per centum per annum, shall be paid in one sum to the Executors, Administrators or Assigns of such Beneficiary.

Should the death benefit become payable, in accordance with an election hereunder, to more than one Beneficiary, whether such Beneficiaries are to participate equally, unequally or successively, the conditions of the beneficiary designation in the Policy relating to apportionment, survivorship and order of succession shall continue in full force after the death of the Insured until the payment of the death benefit shall have been completed; except that, should a Beneficiary become entitled to benefits under Option 5, only the balance, if any, of the instalments certain shall be paid to any surviving Beneficiary entitled to receive any balance due; and except further, that upon the death of a last surviving Beneficiary, 1104 the total amount then retained by the Company under Option 1, 2 or 3, or the value of the then unpaid instalments certain, if any, under Option 4 or 5, commuted at the rate hereinbefore provided, shall be paid in one sum to the Executors, Administrators or Assigns of such Beneficiary.

Should there be no Beneficiary living when this Policy becomes a claim by death, any election made by the Insured shall be inoperative.

1105

Settlement Options

The tables below are based on a Policy the proceeds of which are one thousand dollars, and will apply pro rata to this Policy.

TABLE A
Monthly Instalments Certain

	Number of Instalments	Amount of Each Instalment
	60	\$18.12
1106	120	9.84
	180	7.11
	240	5.76

TABLE B
Continuous Monthly Instalments (120 or 240
instalments certain and for life thereafter)

	Age of Bene- ficiary at Date of Payment	Amount of Each Instalment (120 certain)	Amount of Each Instalment (240 certain)
1107	10 & Under	\$3.76	\$3.66
	11	3.78	3.68
	12	3.79	3.69
	13	3.81	3.71
	14	3.83	3.72
	15	3.84	3.74
	16	3.86	3.76
	17	3.88	3.77
	18	3.90	3.79

1108	19	3.92	3.81
	20	3.95	3.83
	21	3.97	3.85
	22	3.99	3.88
	23	4.02	3.90
	24	4.05	3.92
	25	4.08	3.95
	26	4.11	3.98
	27	4.14	4.00
	28	4.17	4.03
1109	29	4.21	4.06
	30	4.25	4.10
	31	4.29	4.13
	32	4.33	4.16
	33	4.37	4.20
	34	4.42	4.24
	35	4.47	4.28
	36	4.52	4.32
	37	4.57	4.36
	38	4.63	4.41
1110	39	4.69	4.45
	40	4.75	4.50
	41	4.82	4.55
	42	4.89	4.60
	43	4.96	4.65
	44	5.04	4.71
	45	5.12	4.76
	46	5.21	4.82
	47	5.30	4.87
	48	5.40	4.93


1111	49	5.50	4.99
	50	5.61	5.05
	51	5.72	5.10
	52	5.84	5.16
	53	5.96	5.22
	54	6.09	5.27
	55	6.22	5.32
	56	6.36	5.37
	57	6.51	5.42
	58	6.66	5.47
1112	59	6.82	5.51
	60	6.97	5.55
	61	7.14	5.58
	62	7.30	5.62
	63	7.47	5.65
	64	7.64	5.67
	65	7.82	5.69
	66	7.99	5.71
	67	8.16	5.72
	68	8.32	5.74
1113	69	8.49	5.74
	70	8.65	5.75
	and over		

Attached thereto:

The Pacific Mutual Life Insurance Company of
California

In consideration of the payment of an initial
term premium of Forty and 50/100 Dollars, it is,

MICROCARD

TRADE MARK 

22



MICROCARD[®]
EDITIONS, INC.

PUBLISHER OF ORIGINAL AND REPRINT MATERIALS ON MICROCARD AND MICROFICHES
901 TWENTY-SIXTH STREET, N.W., WASHINGTON, D.C. 20037. PHONE (202) 333-6393

2102

38-66



- 1114 understood and agreed that Policy No. 464140 dated Oct. 15, 1922 issued on the life of Andrew James Copp, Jr. (referred to in the Policy as the "Insured") shall be considered as in full force and effect from the date of this agreement until the date of the Policy, provided, however, that there shall be no liability under this agreement until the Policy shall be manually delivered to the Applicant and the entire amount of the initial
- 1115 term premium actually paid during said Applicant's lifetime and good health.

It is further agreed that the Company shall have the right to deduct from any amount which may become payable the unpaid balance of one full year's premium from the date of this agreement, based on the annual premium required to be paid under the conditions of the Policy.

- 1116 Attached to and made a part of Policy No. 464140

Dated this Fifteenth day of July, 1922.

THE PACIFIC MUTUAL LIFE INSURANCE
COMPANY OF CALIFORNIA

George J. Cochran

President

J. E. Miller

Assistant Secretary

Initial Term Life—Form 839-C

1117 APPLICATION FOR LIFE INSURANCE

The Pacific Mutual Life Insurance Company
of California

1. Full Name (Please print) Andrew James
(Copp, Jr.
(No. 314 S. Union Ave. Street
2. Residence (Town Los Angeles
(County Los Angeles State Calif.
(No. 412 Copp Building Street
Business (Town Los Angeles State Calif.
(Name of Firm or Employer Self
3. Place of Birth Town or County Millerton
State N. Y. Date of Birth Day 15 Month
Oct. Year 1880 Age at nearest birthday 42
4. A. Occupation Lawyer How long so en-
gaged? 18 years

It is not sufficient to state (for exam-
ple) "Merchant," "Mechanic", "Sales-
man," or "Clerk"; the particular branch
of business or trade must be specified
and exact duties given.

1118

- B. Any other occupations. State duties in
full. None
- C. Former occupations. State duties in full.
Teacher
- D. Temporary or permanent changes in
occupation contemplated. None
- E. No special journey, or travel outside of
the mainland of the United States, is
contemplated, except No exceptions

- 1120 5. Amount of Insurance If Income Insurance, state amount of monthly payment. \$10,000
- (A. Insert Ordinary Life, — Pay-
6. Plan of (ment Life, — Year Endow-
Policy (ment, or other plan desired.
(20 Payment Life
(B. Insert Annual Dividend or
(Non-Participating. Non-par-
(ticipating
7. A. Premiums to be paid Insert Annually,
1121 Semi-Annually, or Quarter-Annually
Semi-Annually
B. Notices to be sent to State whether Resi-
dence or Business Address. Business
8. A. Pay Death Benefit to Cora Lord Copp,
my wife or in case of her prior decease
Print name of Beneficiary in full and
state relationship to Applicant
to (Andrew James Copp III, son)
(Jane Pendexter Copp, daughter)
1122 Equally or survivor, Beneficiary, or
should there be no Beneficiary living at
time policy becomes a claim by death,
then to the Executors, Administrators
or Assigns of the Insured.
B. If Continuous Monthly Income Policy is
applied for, give Date of Birth of Bene-
ficiary: Day Month Year
9. Other Life Insurance Company or Frater-
nal Order Travelers Amount Plan of Pol-
icy \$5000 20 Payment Life 10,000 Term

1123 Year taken 1917 1918 Now in force U. S.
Government

10. I agree that my acceptance of any policy issued on this application shall constitute a ratification by me of any correction or addition made by the Company hereto in the space provided "For Home Office Endorsements Only."

For Home Office Endorsements Only

- 1124 11. I hereby declare that all the foregoing statements, and the answers to the Company's Medical Examiner in continuation of and forming a part of this application, are made by me to obtain the insurance hereby applied for and are complete, true and correct, and I understand that the Company, believing them to be such, will rely and act on them.

- 1125 It is understood and agreed (1) that if the entire amount of the first annual, semi-annual or quarter-annual premium, as selected by me under the statement numbered "7-A" on the insurance herein applied for, is not paid at the time of making this application, there shall be no liability on the part of the said Company under this application unless nor until a policy shall be issued and manually delivered by me and the entire amount of such first premium thereon actually paid during my lifetime and while I am in good health; and (2) that if the entire

1126

amount of such first premium is paid to the said Company's Agent at the time of making this application, the insurance (subject to the provisions of the said Company's policy applied for) shall be effective from the date of my medical examination therefor and such a policy shall be issued and delivered to me or to my legal representative, provided the said Company in its judgment shall be satisfied as to my insurability on the

1127

date of such medical examination, for the amount and on the plan and form applied for; and (3) that if the said Company shall not be so satisfied, the entire amount of the premium paid, without interest, shall be returned.

Dated at Los Angeles this 15 day of July 1922.

ANDREW JAMES COPP, JR.

Applicant's own signature in ink.

1128

Signed in the)

Presence of)

Maude Ross Ferguson

Soliciting Agent

131312 G Note: In the Interest of the Applicant a settlement should be made at the time of signing this application

Statement to be signed by applicant for settlement with agent:

I hereby declare that I have paid to Maude Ross Ferguson, Agent of The Pacific Mu-

- 1129 tual Life Insurance Company of California,
\$59.25 By check and \$218 By note Dollars,
and hold a receipt for the same on form
detached from and corresponding in date
and number with this application.

Date July 15, 1922.

ANDREW JAMES COPP, JR.

Applicant's own signature in ink.

Form 4324

1130 Questions to Be Asked by the Medical Examiner

(This examination must be made in private by
a regularly appointed Medical Examiner, no
Agent or other third person being present)

In continuation of and forming a part of my
Application for Insurance to The Pacific Mutual
Life Insurance Company of California.

1. A. Where have you resided during summer
and winter of last ten years? A Calif.
1131 B. Have you ever changed or been advised
to change your occupation or residence to
benefit your health? B No
2. A. How much of each of the following alco-
holic beverages do you use daily? A.
Spirituious none Beer None Wine none
B. Have you ever used them to excess?
(Give particulars.) B. No
C. Have you ever used opium, cocaine or
any other drug? C. No

1132

D. Have you ever taken treatment for liquor or drug habit? If so, when and where? D. No

E. If a total abstainer, how long so? E. Always

F. Have you ever engaged in the manufacture or sale of wines, spirits or malt liquors? When and how long? F. No

1133

3. A. Has any one in your family committed suicide or suffered from Cancer, Epilepsy or Insanity? (Details each such case.) A. Brother ded'd Traumatic Insanity Worcester State Institution Mass.

B. Has any one in your family or in your immediate household ever suffered or died of Consumption or any other contagious disease? (Details each such case.) B. No.

1134

4. A. Has any Insurance or Assessment Company or Fraternal Society ever refused you Insurance, or limited or postponed your Application? (Details each such case.) A. No

B. Have you ever applied for Insurance without getting the Policy, or have you any other Application now pending? B. No

C. Have you ever applied for a pension or Government Compensation? If so, give the cause for each such claim. C. No

Give name, history date and duration of each disease or symptom

1135. 5. Have you ever had or been treated for: Yes or No

A. Apoplexy, Paralysis, Epilepsy, Dizziness, Mental Derangement? No

B. Asthma, Shortness of Breath, Chronic Cough, Spitting of Blood? No

C. Influenza, Pneumonia, Pleurisy, Bronchitis, Tuberculosis? No

D. Disease of Heart or Blood Vessels, Sunstroke, Nervous Prostration? No

1136 E. Gastric or Duodenal Ulcer, Indigestion, Appendicitis, Piles, Fistula? No

F. Liver, Kidney or Bladder Disease, Sugar or Albumin in Urine? No

G. Colic, Gravel, Gall Stones, Jaundice, Malarial or other Fevers? No

H. Cancer, Tumor, Open Sores, Goitre, Enlarged Glands, Skin Disease? No

I. Locomotor Ataxia, Lumbago, Gout, Rheumatism, Syphilis? No

1137 J. Difficulty with Sight or Hearing, Discharge from the Ear? No

K. Have you ever had a surgical operation? No

L. Have you given full information about each disease or symptom mentioned above which you have ever had or been treated for? Yes

6. Have you had any injuries or illnesses or consulted or been treated

1138

by any physician or practitioner during last seven years? No

Give particulars each illness, Injury, Consultation and Treatment

Date Duration Result
Physician's Name and Address

7. Has your weight in the past year
(Increased? no How much? None lbs.
(Diminished? No

8. Are you now in good health? Yes

1139

9. Family Record?

State of health; if not good, Cause of Death:

Age if give full Age at give full
living details Death details

Father 75 good

Mother 68 good

B Number
re Living(2)

1140

36
or 40 good

ts Number
h dead(1)

27est Pneumonia

St Number
ie Living(0)

sr Number
s Dead(1)

10 Diphtheria

Date of Death

How long sick

1906

a few days

1896

4 days

